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THIRTY YEARS IN THE UNITED STATES SENATE.*

Mr. Benton's "Thirty Years in the United States Senate" has, by this time, reached the libraries of many statesmen and politicians of the country. By most of them it was sought for with eagerness, and has been read with interest and gratification. The author, who was once a lawyer, and for a long time a law-maker, though never a law expounder, has probably been known to more of our citizens, and been intimately acquainted with more of our distinguished men, than any other individual among us. Thirty years of uninterrupted service in the highest branch of our national legislature, has afforded him an opportunity, which no other man has enjoyed, to become acquainted with human nature, with the science of government, if there be such a science, and with all the interests, domestic and foreign, of the nation; and it indicates the possession of uncommon talents, and of unwavering fidelity in the exertion of those talents to the interests of his constituents. It has never had, and will never be, a precedent.

If he has his peculiarities and foibles, he has, or he has done something also, which has given him a hold upon the veneration and affections of many of the people. As time

* Thirty Years View; or a History of the working of the American Government for Thirty Years, from 1820 to 1850, chiefly taken from the Congress Debates, the private papers of General Jackson, and the Speeches of ex-Senator Benton, with his actual View of men and affairs. D. Appleton & Co. New York, 1854. 8vo. pp. 739.

drapes the forest tree with a mantle of moss, which hides its gnarled branches and the excrescences which disfigure its otherwise shapely trunk,— so white hairs and the well-meant services of a long life, sometimes cover the faults and foibles of men. Let it be so with him.

We cannot follow Mr. Benton through the details of this bulky volume; nor shall we undertake a connected view of the events he discusses. Perhaps our readers may be interested in following our steps as we touch, somewhat unconnectedly and discursively, upon some of the more interesting matters of history or politics, which we find in his work.

Before the commencement of the period of "Thirty Years," Colonel Benton had made himself somewhat conspicuous in the southwestern portion of the Union by his activity in military affairs, and by essays in newspapers. From incidental remarks in his book, we infer that he was born in North Carolina, was related to several distinguished families in that and in the neighboring States, and was, in his youth, a frequent visitor in the family of Gen. Jackson. To give the reader a more intimate knowledge of the man than he may now possess, or might otherwise obtain, we insert here an extract from a chapter at the end of the volume, in which he relates some incidents in his own life and in the life of the General.

"I have said that his appointment in the regular army was a victory over the administration, and it belongs to the inside view of history, and to the illustration of government mistakes, and the elucidation of individual merit surmounting obstacles, to tell how it was. Twice passed by to give preference to two others in the West, (General Harrison and General Winchester,) once disbanded, and omitted in all the lists of military nominations, how did he get at last to be appointed Major General? It was thus. Congress had passed an act authorizing the President to accept organized corps of volunteers. I proposed to General Jackson, [then (1813) a Major General in the Tennessee militia,] to raise a corps under that act, and hold it ready for service. He did so, and with his corps and some militia, he defeated the Creek Indians, and gained the reputation which forced his appointment in the regular army. I drew up the address which he made to his division at the time, and when I carried it to him in the evening, I found the child* and the lamb between his knees. He had not thought of this resource, but caught at it instantly, adopted the address, with two slight alterations, and published it to his division. I raised a regiment myself, and made the speeches at the general musters, which helped to raise two others, assisted by a small band of friends, all feeling confident that if we could conquer the difficulty — master the first step — and get him on the theatre of action, he would do the rest himself. This

* Referring to an incident elsewhere narrated.

is the way he got into the regular army, not only unselected by the wisdom of government, but rejected by it — a stone rejected by the master builders, and worked in by an unseen hand, to become the corner stone of the temple. The aged men of Tennessee will remember all this, and it is time that history should learn it."

Mr. Benton took his seat, as senator from Missouri, at the last session of Congress during Mr. Monroe's first term, (1820–21,) on the admission of that State into the Union. Of course the fierce struggle, which preceded her admission, does not come within his period of thirty years. But he gives a brief history of it in his "Preliminary View," and treats of it again in his second chapter. The few pages which he devotes to the subject, were evidently written long after the time to which they relate, but under the influence of impressions then received and still remaining on his mind. "Slavery agitation," he says, "took its rise during this time, (1819–20,) in the form of attempted restriction on the State of Missouri — a prohibition to hold slaves, to be placed upon her as a condition of her admission into the Union, and to be binding on her afterwards. This agitation came from the North, and under a federal lead." It came from the North, it is true; but where is the proof that it came "under a federal lead?" The eminent author adduces none; the journals of Congress furnish none; the lead was obviously a republican lead; the mover in the House was a republican; no southern federalist followed this lead; some northern federalists refused to follow it; nearly all the republicans of the North, as their feelings prompted and their principles required, voted for restriction. The error of Mr. Benton arose from hints and suggestions scattered among the northern by southern republicans, to produce jealousy and distrust. They had effect on a few only at the time, but afterwards, by constant repetition, caused many to swerve.

In a subsequent page he remarks: "The real struggle was political, and for the balance of power, as frankly declared by Mr. King, who disdained dissimulation." Mr. King spoke for himself only, and, thus speaking, whatever he did say, or admit, was doubtless true, for he was an honorable man; but we do not believe that he said, or meant to say, or thought, that the struggle, on the part of the North, was solely for the balance of power. We have no doubt that with most, possibly all, it was a concurring motive; that with some, who had made politics the business of a long life, it was the chief motive; and it is a

laudable motive, even if the sole motive, when defensive, — but the largest portion, by far, of the delegates from the free States and of their constituents, were actuated by an intense conviction, that slavery is wrong; that it is inconsistent with the fundamental principles of our government, a stain on our national character, an occasion of national weakness, and a hindrance to the prosperity of any State or territory wherein it should be permitted to exist or to enter. We are constrained to say, that nowhere else, in the book, have we met with a passage imputing, as this does, insincerity to the people of the North, so unfounded and exceptionable as this. Is there, then, no sincerity in the voice of Christendom? Is the admission of Randolph nothing, that the literature of the world was against him? By what motives were Washington and Jefferson and Patrick Henry actuated, when they uttered their condemnations of slavery? What feelings moved, what principles guided, the common people of England to demand of their government the abolition of slavery in the West Indies, at a cost of one hundred millions of dollars, to be taken in due proportion from their own pockets? — Dissimulation! If Mr. Benton had stopped a moment to inquire what feeling, yet lurking in some involution of his heart, had prompted his pen to write that word, he would have blotted it out forever.

The Seminole campaign, in which General Jackson chastised the Florida Indians, hung the two Englishmen, Arbuthnot and Ambrister, and took possession of St. Marks and Pensacola, fortified places in Florida, then Spanish territory, must yet remain fresh in the memories of many; and it must be remembered also that, in the next session of Congress, several resolutions were introduced into the House of Representatives, in relation to those transactions, one of which declared that the seizure of St. Marks and Pensacola was contrary to orders, and in violation of the Constitution.

In the long and warm debate which followed, General Jackson's friends maintained that he was authorized by the orders he received from the War Department to enter Florida, and take possession of the places mentioned; and they professed to find sufficient evidence to maintain their position in the documents communicated to Congress. But these documents contained no explicit order or permission to do so, and his supporters were obliged to rely on the

general tenor of the despatches; on a special injunction addressed to the General "to adopt the necessary measures to put an end to the conflict;" and on a declaration, in a letter from the Secretary of War to Governor Bibb, of Georgia, that "General Jackson is vested with full power to conduct the war in the manner he may deem best." On the other hand, the documents contained an order to General Gaines, who preceded General Jackson in the command of the troops, and which was communicated to him, directing that if the Indians, when pursued, should take shelter under a Spanish fort, he must halt, and report to the Department.

Notwithstanding the proof appeared to be strong against General Jackson, the House rejected the resolution of censure by a vote of 100 to 70. It was well known that this vote, though an acquittal, did not satisfy General Jackson; and once at least a report was circulated that he was preparing a publication which would completely justify his conduct. In the work before us, page 169, appears for the first time, "An Exposition of Mr. Calhoun's Course towards General Jackson," which was found among the General's papers after his decease. Its main purpose appears to be to justify his conduct towards Mr. Calhoun, and those who wish to know the causes assigned by him for the rupture, will do well to consult the "View;" but we find in the Exposition certain documents and statements in regard to the Seminole campaign, at which time Mr. Calhoun was Secretary of War, which we presume will be more interesting to most of our readers.

First among the documents in relation to this subject, is the copy of a confidential letter from General Jackson to the President, dated Nashville, Jan. 6, 1818, in which, after acknowledging the receipt of orders and enclosures, and making remarks on them, he wrote, near the close of the letter: "The order to take possession of Amelia Island ought to be carried into execution at all hazards, and simultaneously the whole of Florida seized. . . . This can be done without implicating the government. Let it be signified to me through any channel, (say Mr. J. Rhea,) that the possession of the Floridas would be desirable to the United States, and in sixty days it will be accomplished." This letter was received by Mr. Monroe, when he was prostrated by sickness. He read a few lines of it only, and then, Mr. Calhoun being present, he handed it to him

for his perusal. Mr. Calhoun read it, and returned it to the President, remarking that it was a confidential letter relating to Florida, which he must answer. Mr. Monroe, on being inquired of for the letter, the next December, had forgotten it entirely, but on searching found it among his papers, and then read it, as he avers, for the first time.

Nevertheless, General Jackson asserts, that on his way to take command of the troops, he received, "at Big Creek, four miles in advance of Hartford, Georgia," a letter from Mr. Rhea, stating that "the President had shown him the confidential letter, and requested him to state that he approved of his suggestions." And he further states, that on the 13th of May, Mr. Calhoun wrote to Governor Bibb, as before mentioned, that "General Jackson is vested with full power to conduct the war in the manner he may deem best;" that he distinctly informed Mr. Calhoun, in March and in May, of his intention to seize and occupy St. Marks and Pensacola, and, afterwards, that he had done so; and that, not until he received a private letter from the President, dated July 19th, had he any doubt that he had acted, in every respect, in strict accordance with the views of the President and Secretary.

General Jackson further states, that, in the winter of 1818–19, at Washington, "Mr. Rhea called on him, as he said, at the request of Mr. Monroe, and begged him, on his return home, to burn his reply. He said that the President feared that, by the death of General Jackson, or some other accident, it might fall into the hands of those who would make an improper use of it. He therefore conjured him, by the friendship which had always existed between them, (and by his obligations as a brother mason,) to destroy it on his return to Nashville. Believing Mr. Monroe and Mr. Calhoun to be his devoted friends, and not deeming it *possible* that any incident could occur which would require or justify its use, he gave Mr. Rhea the promise he solicited, and accordingly, after his return to Nashville, he burned Mr. Rhea's letter, and on his letter book, opposite the copy of his confidential letter to Mr. Monroe, made this entry: '*Mr. Rhea's letter in answer is burnt this 12th April*, 1819.'"

It seems to be well established, by the vouchers referred to, in Mr. Benton's introductory remarks, as sustaining the text, in every particular, that General Jackson received the letter from Mr. Rhea; but men will doubt whether Mr.

Monroe instructed him to write it, and will inquire who did. That such a letter was written, and such an answer received, was doubtless known to the members of the Cabinet before the commencement of the debate in the House of Representatives. A full account of the interview which took place, at New York, between Mr. Monroe and Mr. Rhea, when the former was on his death-bed, may furnish aid in forming an opinion on the subject.

In the year 1818, Col. Benton, then a member of the bar in Missouri, having learned that in the treaty just concluded between the United States and Spain, establishing the boundaries between the two nations, Texas was not relinquished to us, appealed to the people through the newspapers against what he called the *cession* of that country to Spain, warmly censuring Mr. Adams, then Secretary of State, of whose "great culpability" he now says he then had no doubt, for thus consenting to diminish the area of Southern territory. Knowing now that Mr. Adams did not vote, in the Cabinet, to relinquish our *claim* to Texas, he charges the other members of the Cabinet (Monroe, Crawford and Calhoun) with having so voted, from an apprehension that insisting on it at that time, when slavery agitation was rife, would endanger their success as candidates for the presidency. This, he says, is the inside view of the slave question, as it stood at that time, whereof he has "the material to write the true and secret history; but this belongs to the chapter of 1844," in the forthcoming volume. A promise to disclose the secret history and causes of past transactions, is apt to stimulate curiosity; but we doubt whether the facts which he may be able to reveal will be sufficient to sustain his charge, unless he should show also that our claim to Texas was valid beyond question.

In the nineteenth chapter, an account is given of the election of President, by the House of Representatives, when Adams, Jackson, and Crawford were candidates. The author furnishes additional evidence of the falsity of the charge of bargain between Adams and Clay. "It came within my knowledge, (for I was then intimate with Mr. Clay,) long before the election, and probably before Mr. Adams knew it himself, that Mr. Clay intended to support him against General Jackson; and for the reasons after-

wards averred in his public speeches." He also observes, that "the election of Mr. Adams was perfectly constitutional, and as such fully submitted to by the people; but it was also in violation of the *demos krateo* (democratic) principle, and that violation was signally rebuked." In saying that the election was a violation of the democratic principle, we think he is mistaken. If our memory is not greatly at fault, it was shown at the time that, though General Jackson received the greatest number of electoral votes, Mr. Adams received the greatest number of the votes of the people. It was, in fact, an instance in which the democratic principle prevailed over an aristocratic feature of the Constitution.

Elsewhere, in speaking of the succeeding election he says that the democratic principle was then victor, 'and great and good were the results that ensued.' If he means, as he apparently does, that the results have been better than would have been the results of a different event, we ask, with great deference, from what source does he derive the power to compare the actual results of an actual event with the results of an event that never happened? Had Mr. Adams been re-elected, — he who never removed an officer but for misconduct; of whom it may with truth be said that, in the performance of his official duties, he knew no North, no South, no East, no West; who missed a prolonged opportunity to do good to his country, by an earnest pursuit of an honest and enduring fame; who, when alive, was ridiculed by his enemies and censured by many friends for rejecting with disdain the expedients of ambitious politicians, but when death struck him at his post was spontaneously lauded, as no one before has been but he who still holds the first place in our hearts — had he been re-elected, is Mr. Benton certain that the constitution would have been administered with less regard to its provisions; that the will of the people would have been left less unbiased and been less regarded; that intriguers would have flourished more in the land; that the national character would have been less respected; and, in fine, that the people would have been less prosperous, and have had less cause to be contented?

The project of removing the Indians who still remained in the interior of the south-western States, from the east to the west side of the Mississippi, though before sug-

gested, was first undertaken in 1824, under the auspices of President Monroe and Mr. Calhoun. On the 12th of February, 1825, a treaty was made with the celebrated Creek chief McIntosh, and others, by which all the lands belonging to that nation, in Georgia, were ceded to her, and the Indians were bound to seek a new home in the wilderness beyond Arkansas. Several chiefs, who followed this treaty to Washington, protested against the ratification of it on the ground that McIntosh had no authority to sign it. The protest was but little regarded, and the session of Congress being near its close it was immediately ratified. Very soon afterwards, McIntosh was put to death, in pursuance of a law of the Creek nation. Mr. Adams, who had then just entered on the duties of his office of President, being convinced, on investigation, that the treaty was signed without authority, determined not to enforce it. All Georgia was enraged, and her Governor declared he would enforce it himself, take possession of the lands, and drive off the Indians. This aroused the President, who displayed traits of character for which Gen. Jackson had become famous. He immediately despatched Gen. Gaines into the Indian territory with a large force to resist any attempts which Georgia might make to execute her threats, and wrote a stern letter to the Governor, declaring explicitly that he felt bound, by even a higher obligation than that imposed by the constitution, to protect the Indians. At the same time, he opened a negotiation with the acknowledged and accredited chiefs of the Creek nation; and subsequently a new treaty was concluded and ratified, by which, for a larger compensation, differently distributed, the nation sold all their lands and agreed to emigrate as was stipulated in the void treaty.

This, adds Mr. Benton, was an incalculable advantage to Georgia, "and had been sought in vain under three successive southern Presidents, — Jefferson, Madison, Monroe — and was now accomplished under a northern president, with the full concurrence and support of the northern delegations in Congress: for the northern representatives in the House voted the appropriations to carry the treaty into effect as readily as the senators had voted the ratification of the treaty itself. Candid men, friendly to the harmony and stability of this Union, should remember these things when they hear the northern States, on account of the conduct of some societies and individuals,

charged with unjust and criminal designs towards the South."

Mr. Benton is in favor of an amendment of the Constitution of the United States, giving to the people the election of President and Vice President, by a direct vote for the men of their choice. To effect his object, he would provide that each State should be divided into as many districts as it may have senators and representatives, and that the majority in each district should be entitled to one vote. If no choice should be made at the first meeting, another meeting should be held, and a choice made from the two candidates having the highest number of votes. He proposed such an amendment in 1824, and again as Chairman of a committee in 1825; and President Jackson recommended it to the consideration of Congress in 1829.

The reasons he assigns for his proposed amendment are well worthy of consideration, and we will briefly state the most important: — The intent of the framers of the Constitution, in interposing electors between the people and the candidates, — that eminent and intelligent citizens should be designated to supply the inevitable want of knowledge among the people — has been entirely disregarded and defeated; they exercise no will of their own, but are the mere instruments of the conventions that designate them, as well when it does not express their own preferences or the will of the people, as when it does, — disobedience to their injunction being punishable with every penalty which public indignation could inflict; in the conventions held to nominate presidential candidates, the selection becomes the result of a juggle, conducted by a few adroit managers, who baffle the nomination until they are able to govern it and to substitute their own will for that of the people; "perhaps another example is not upon earth of a free people voluntarily relinquishing the elective franchise in a case so great as that of electing their own chief magistrate, and becoming the passive followers of an irresponsible body — juggled, and baffled, and governed by a few dexterous contrivers, always looking to their own interests in the game which they play;" should the amendment be adopted, if no one receives a majority at the first meeting, the vote given will stand as a popular nomination of the two persons having the highest number of votes, and one of the two would certainly be elected on the second trial.

The choice of electors by a general ticket, the mode now almost universally adopted, is considered and condemned. It does not give fair play to the will of the people, nor to that of different portions of the people. It violates the rights of minorities, for a majority of one will carry the vote of a whole State, which may consist of twenty or thirty electoral votes; and this majority may be given in one part of a State, and the minority in another, each part having distinct and opposite interests. The minority does not merely lose their votes; they are taken away, and given in effect to men whom they voted against. And, furthermore, it gives undue consequence to one or a few leaders and managers of elections, who may found greater claims to office on thirty votes than on one.

We are inclined to think that the constitution, thus amended, would be better than it now is. But will it abolish conventions, the greatest evil that has arisen from the working of the constitution? Will it arrest the movement of that newly invented machinery which transforms freemen into puppets and automatons? Will not party conventions continue to control, as before, the votes of all party men in the districts? Will not itinerant intriguers volunteer or be sent? And what would a voter in Tennessee or California know of a candidate in New York or Maine? Unless the amendment, by an additional clause, should provide that candidates nominated by conventions should be ineligible, it would not destroy their influence, nor smother party spirit, so effectually as the amendment proposed by Mr Hillhouse, providing for the appointment of president by lot; of which we gave an account, and some of the many reasons in support of it, in a recent number of this Journal.

Hope and perseverance are characteristics of Mr. Benton. Though he failed in Congress, he does not despair that the great evil, and flagrant disgrace, of caucus nominations will be removed in time. And he now republishes his propotition and some extracts from his speech, "in the hope of keeping the question alive, and obtaining for it a better success at some future day." Select bodies are not, he says, the places for popular reforms. They are for the benefit of the people, and should begin with the people. State legislatures are authorized to propose amendments, and the members of those bodies should be specially instructed by their constituents. The greatest reform ever

effected by peaceful means, was the parliamentary reform of Great Britain, which was not effected until after forty years of continued exertion, and by incessant appeals to the people themselves. Its friends began their efforts in 1792, and succeeded in 1832; and in their success is matter for encouragement, as in their conduct there is an example for imitation.

Our extracts, from the work before us, have not been given to exhibit samples of the author's style, but to elucidate historical events, or to make known his opinions. We will now copy a portion of the account he has given, and the character he has drawn, of William Pinkney, not so much, however, to present a favorable specimen of his style as to gratify our professional readers:

"He fell like the warrior in the plenitude of his strength, and on the field of his fame — under the double labors of the Supreme Court and of the Senate, and under the immense concentration of thought which he gave to the preparation of his speeches. He was considered, in his day, the first of American orators, but will hardly keep that place with posterity, because he spoke more to the hearer than to the reader — to the present than to the absent — and avoided the careful publication of his own speeches. He labored them hard, but it was for the effect of their delivery, and the triumph of present victory. He loved the admiration of the crowded gallery — the trumpet tongued fame which went forth from the forum — the victory which crowned the effort; but avoided the publication of what was received with so much applause, giving as a reason that the published speech would not sustain the renown of the delivered one. His *forte* as a speaker lay in his judgment, his logic, his power of argument; but like many other men of acknowledged pre-eminence in some great gift of nature, and who are still ambitious of some inferior gift, he courted his imagination too much, and laid too much stress on action and delivery; so potent on the small circle of actual hearers, but so lost on the national audience which the press now gives to a great speaker. In other respects, Mr. Pinkney was truly a great orator, rich in his material, strong in his argument — clear, natural, and regular in the exposition of his subject, comprehensive in his views, and chaste in his diction. His speeches, both senatorial and forensic were fully

studied and elaborately prepared — all the argumentative parts carefully digested under appropriate heads, and the showy passages often fully written out and committed to memory. He would not speak at all except upon preparation; and at sexagenarian age — that at which I knew him — was a model of study and labor to all young men. His last speech in the Senate was in reply to Mr. Rufus King, on the Missouri question, and was the master effort of his life. The subject, the place, the audience, the antagonist, were all such as to excite him to the utmost exertion. The subject was a national controversy, convulsing the Union and menacing it with dissolution; the place was the American Senate; the audience was Europe and America; the antagonist was PRINCEPS SENATUS, illustrious for thirty years of diplomatic and senatorial service, and for great dignity of life and character. He had ample time for preparation, and availed himself of it. Mr. King had spoken the session before, and published the 'Substance' of his speeches, (for there were two of them,) after the adjournment of Congress. They were the signal guns for the Missouri Controversy.* It was to these published speeches that Mr. Pinkney replied, and with the interval between two sessions to prepare. It was a dazzling and over-powering reply, with the prestige of having the Union and the harmony of the States for its object, and crowded with rich material. The most brilliant part of it was a highly wrought and splendid amplification, (with illustrations from Greek and Roman history,) of that passage in Mr. Burke's speech upon 'Conciliation with the Colonies,' in which, and in looking to the elements of American resistance to British power, he looks to the spirit of the slave-holding colonies as a main ingredient, and attributes to the masters of slaves, who are not themselves slaves, the highest love of liberty and the most difficult task of subjection. It was the most gorgeous speech ever delivered in the Senate, and the most applauded; but it was only a magnificent exhibition, as Mr. Pinkney knew, and could not sustain, in the reading, the plaudits it received in delivery; and therefore he avoided its publication."

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* Mr. Benton, when he wrote this, must have forgotten the stormy debate, in the House of Representatives, which preceded the debate in the Senate. Extracts from two eloquent and forcible speeches there delivered may be read in Hildreth's History.

We must here take leave, for the present at least, of the ponderous volume which Col. Benton has presented to his fellow citizens; but we ought not to do so without expressing our approbation of the plan and execution of the work. We do not assent to all his opinions, nor pretend to know the verity of his facts, but we declare our belief that they are entitled to that regard from the public, and the future historian, which is due to any eminent partizan statesman. We hope that his example will be followed by other statesmen, of every party, so that posterity may know what measures have been carried, and what defeated, at any and every period of our national existence, and learn all that can be told of the motives and reasons which led to their adoption or rejection. Let no one be deterred by dread of the imputation of egotism or vanity; he is not worthy to be ranked among statesmen who is not superior to the influence of such fear.

A SHORT READING ON A SHORT CLAUSE IN THE CONSTITUTION OF THE UNITED STATES.*

"No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any laws or regulations therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due."

Art. 4, *sect.* 2, *clause* 3.

It is a rule of construction, universally admitted, that Congress cannot pass any act, which can have the force of law, unless the power to pass such a law is granted in the Constitution. This clause certainly grants no such power. What then is its force and intent?

It has the force of *law*, of fundamental, "supreme" law. (Art. 6.) Like all law, it is a rule of action to individuals, and courts are bound to regard it. Assuming that the word "persons" includes *slaves*, no grant of power to Congress was or is needed. As law, it executes itself, or may be executed without any other law, State or national, on the

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* These views of the legal aspect of this "vexed question" may be in part novel and interesting to some of our readers. We give no opinion in regard to them. — Ed.

subject, and without the instrumentality of any officers *specially* appointed, or *specially* authorized to execute it.

The chief, perhaps the whole intent of the clause is to repeal, or render inoperative, all State laws and regulations interfering with the recovery of escaping slaves. It gives or secures to the owner of a slave, residing in a slave State, the same right to take or recover him, and by the same mode, should he escape into a free State, as he would have should the slave run away from his plantation to the plantation of a fellow-citizen of the same slave State. It authorizes the master, if he should find the slave in a free State, in the highway or elsewhere, not in the possession or under the protection of any one, to seize him and take him home, if he can. If he ascertains that he is in the possession of any one, or is harbored by any one, he may demand him of such person, who must, in obedience to the laws, "deliver him up" to the claimant.

And if the person on whom the demand is made should refuse to "deliver him up," the claimant may institute against him an appropriate action — such action as is in use for such purpose in slave States, detinue for instance, and thus vindicate his right, under the law, to have his slave "delivered up." This action, and probably also trover and replevin, are now in use in the Southern States, and may or must have been, when the convention was sitting, in use in all the States where slavery then existed, to recover the possession of slaves or their value. The action may be tried in the same courts and in the same way that any such action may be tried. The question to be submitted to, and tried by the jury would be — (besides those of possession, demand and refusal) — Was the "person" held to service or labor by the laws of the State from which he fled? Did he *escape* from that State? Was such service or labor due to the claimant? If on all these questions submitted, the verdict of the jury should be in the affirmative, the decision of the court would necessarily be, that the slave should "be delivered up" to the claimant, or his value paid.

If the clause is supposed, by any portion of the people, to be defective, or if, by any other portion, it is considered objectionable, it may be amended or repealed, as any other provision of the Constitution may be, but not otherwise. The national legislature can do nothing; the State legislatures are not bound, except by comity to sister States,

to do anything; but they may do, in aid of the fundamental law, anything which their own constitutions do not forbid; and they may do anything for the protection of their own citizens, not in derogation of the fundamental or "supreme" law.

The foregoing construction of the clause quoted is confirmed by a comparison, or contrast, of its phraseology with that of the clause preceding it, which relates to the rendition of fugitives from justice. In that clause, any and all implication of an action or suit is excluded; its special and obvious purpose is to authorize and prescribe the necessary *process* to bring on a trial, in a criminal prosecution already commenced, in another State. The change of phraseology is significant. x.

Recent American Decisions.

Circuit Court of the United States, for the District of Vermont, October Term, 1853.

HENRY HUBBARD AND SOLOMON DOWNER, Adm. of SILAS F. BELKNAP *v.* THE NORTHERN RAILROAD COMPANY.

SAME *v.* SAME AND TRUSTEES.

Where there were joint plaintiffs, one a citizen of Vermont, the other of New Hampshire, in an action in a State Court of Vermont against a Corporation created, established and performing its corporate functions in New York, it was *held*, that the action could not be removed into the Circuit Court of the United States for the District of Vermont on motion of the defendant under the Act of Congress of Sept. 24, 1789; but to give jurisdiction to that court on such removal, both plaintiffs must be citizens of Vermont.

THESE actions, being actions at law, were originally instituted in the State court, and were removed from that court to this court on motion of the defendant, under the Act of Congress of September 24th, 1789. The actions having been entered in this court, pursuant to the order of removal from the State court, the plaintiffs appeared and filed their motions to dismiss the actions, and remand them to the State court, for want of jurisdiction in this court.

J. Converse, for plaintiff.

S. S. Phelps, and *L. B. Peck*, for defendant.

PRENTISS, J. — The judicial power of the United States, by the Constitution, is vested in our Supreme Court, and in such inferior courts as the Congress may, from time to time, ordain and establish. And here I cannot forbear saying, what is very naturally suggested to the mind by this reference to the Constitution, though it may have no direct or immediate bearing upon the particular matter in question, that the more closely any one studies the Constitution of the United States, and the greater his experience and opportunities of observation in civil life, the more he will be brought to admire the wisdom, the sagacity, and the enlightened patriotism of the authors of that instrument. None of its provisions present higher evidence of intelligence, judgment, and inflexible devotion to principle, than those concerning the judiciary — giving it, as they do, a limited, yet adequate jurisdiction, extending to, but not going a jot beyond, what the wants, necessities, and exigencies of the government of a nation, formed by a union of States retaining in severalty a distinct but qualified sovereignty, require — with a tenure of office during good behavior, determinable only by misconduct, — thus securing, as far as any organic law can do, consistently with subjection to just responsibility, that independence of opinion and action, which is indispensably requisite to preserve rectitude, impartiality, and firmness in the administration of justice.

Under and pursuant to the Constitution, Congress, besides a Supreme Court, has established certain courts inferior to that court, called and known as the Circuit and District Courts. In erecting these courts, Congress might have given them such jurisdiction as it thought proper, keeping within the limits prescribed by the Constitution. It might have vested in the Circuit Court, for instance, more or less of the judicial power of the United States, not by the Constitution vested originally or exclusively in the Supreme Court. It has given it, not all it might have given it under the Constitution, but a limited and restricted jurisdiction. By the Constitution, the judicial power of the United States extends, for example, in general terms, to "controversies between citizens of different States;" but by the act of Congress the Circuit Court cannot take jurisdiction of all such controversies, but only of such where the matter in dispute exceeds the sum or value of five hundred dollars. So, as we shall find, the jurisdiction is subject to

restrictions in other respects, such, for instance, as residence of one of the parties in the district where the suit is brought. The result therefore is, that this court has no jurisdiction, and of course cannot exercise any, but such as Congress, by legislative acts warranted by the Constitution, has conferred upon it.

The plaintiffs are joint administrators, under letters of administration granted by a court of probate in this State, the intestate having had his domicil here. One of the plaintiffs, Hubbard, is a citizen of New Hampshire, and the other, Downer, a citizen of this State. The defendant is a corporation, created, established, and performing its corporate functions in New York. The suits were regularly commenced in the State court, according to the laws of the State, service being made upon the defendant in one case, by attaching a large amount of personal property, and in the other, by attaching personal property and also certain debts due to the defendant from certain persons summoned in as trustees.

The language used by Congress in providing for, and regulating the removal of causes, at the instance of the defendant, from a State court, is not the same, in reference to the character or residence of the parties, as that employed in relation to suits originally brought to the Circuit Court. There is a marked difference, in the particular mentioned in the phraseology of the two provisions,—one being much more restrictive than the other. In that giving original jurisdiction, the words are, "where the suit is *between* a citizen of the State where the suit is brought, and a citizen of another State;" in that giving jurisdiction of suits originally commenced in a State court, and regulating their removal, the words are, "commenced by a citizen of the State in which the suit is brought against a citizen of another State." Of course, jurisdiction, which is excluded in both classes of cases where neither party is a citizen of the State in which the suit is brought, is not coextensive in the latter class with that in the former; for no suit, for instance, commenced in a State court, by a citizen of another State against a citizen of the State where the suit is brought, can be removed to the Circuit Court, although it might have been originally brought there. But the difference between the two provisions, so far as concerns the single isolated question here presented, is not material, the construction in that particular, as will be seen, being alike as to both.

If Downer were the sole plaintiff in these actions, he being a citizen of this State, and the defendant resident in New York, the cases, it is obvious, would be within the very terms of the act of Congress; but if Hubbard were the sole plaintiff, he not being a citizen of this State, the cases, it is equally obvious, would not be within the act. The question, therefore, simply is, whether, there being two plaintiffs, it is sufficient to bring the cases within the provisions of the act of Congress, and give jurisdiction, that one of the plaintiffs is a citizen of this State, or whether it is necessary that both should be.

Though there may be no adjudged case exactly in point, or, in other words, any express adjudication in point upon this particular provision of the act, there are several cases upon the provision relating to original jurisdiction, which, from just analogy, would seem to decide the present question. In the case of the *Corporation of New Orleans* v. *Winter et al.*, in error, 1 Wheat. 91, where the plaintiffs below brought their suit in the Circuit Court of Louisiana, one of them being a citizen of the State of Kentucky, and the other a citizen of the Mississippi Territory, it was held, that a citizen of a Territory cannot sue a citizen of a State in the Courts of the United States, nor can those courts take jurisdiction by other parties being joined who are capable of suing. MARSHALL, Ch. J., after stating that Winter, being a citizen of the Mississippi Territory, was incapable of maintaining a suit alone in the Circuit Court of Louisiana, asks, "Is his case mended by being associated with others who are capable of suing in that court?" And he decides the question by saying — "In the case of *Strawbridge et al.* v. *Curtis et al.*, 3 Cranch, 267, it was decided, that where a joint interest is prosecuted, the jurisdiction cannot be sustained, unless each individual be entitled to claim that jurisdiction." The sum of the matter seems to be, that in every case brought before a Circuit Court by original process, each of the persons prosecuting must be competent to sue, and each of the persons defending liable to be sued, in such court. Here, one of the plaintiffs, as well as the defendant, residing out of this district, it is quite evident that the cases between these parties, though between citizens of different States, were not of a character to be within the original cognizance of this court, and of course could not have been instituted therein.

From the rule so laid down at an early day, and thus

reconsidered and reaffirmed at an after period, in respect to the jurisdiction of suits originally brought to the Circuit Court, it must follow, unless a distinction be made where there is no perceptible ground of difference, that the jurisdiction cannot be sustained in the case of a suit originally commenced in and removed from a State court, except the citizenship of each individual be such as to make the suit removable, and thus subject him to such jurisdiction. According to the rule, the local residence of all the parties on each side must be such as to bring the case within the provision of the act of Congress regulating the removal; that is, all the party plaintiffs must be citizens of the State in which the suit is brought, and all the party defendants citizens of some other State or States.

Such appearing to be the construction not only authorized, but called for, by determinations of the highest judicial authority, it forms the law for the decision of the question here pending; and according to it, one of the plaintiffs not being a citizen of this State, this court has not jurisdiction. The consequence is, that the motions to dismiss must be allowed, and the causes remanded to the State court.

Note.—It was clearly seen by the great men who conceived and framed the Constitution of the United States, that without a national judiciary, existing under and deriving its authority solely from the national government, with powers commensurate with, but not exceeding the great purposes and objects of the Union, the government would have neither efficiency nor stability, and would soon perish for want of power in itself to enforce obedience to its laws, and hold the people, and through them the States, in just subordination to the paramount national authority. It was considered indispensable to have a judiciary, to take cognizance not only of all suits and prosecutions in behalf of the general government, or arising under its laws, but of controversies between citizens of different States, and especially of all controversies between States, arising out of adverse or interfering State claims, thereby securing a peaceful determination of what might otherwise grow into forcible collisions and conflicts; and also for protection to every citizen of the Union against all unconstitutional invasions of his rights, either by acts of legislation prohibited to the States, or by unauthorized legislative action of the general government.

It was also held, and acted upon as an undeniable proposition, that, to maintain the Constitution itself in its true spirit and meaning, and secure a just and faithful performance of judicial duty, in all questions arising under the constitution and laws, or affecting individual private rights, it was not only expedient and judicious, but essentially necessary, to make the judiciary *independent*—independent as provided in the Constitution—by elevating the judges, as far as practicable, above and beyond the reach of governmental, popular, or sinister influences. It was seen, that if you make the continuance in office of a judge dependent on re-appointment or re-

election, at short stated periods, you so much lessen or impair his independence: and that just in proportion as you do that, you diminish your security for his good behavior. At the same time it was seen, what more than sixty years experience has proved to be true, that, as the judges neither would have, nor could exercise, any power otherwise than through the decision of controversies brought judicially before them, between party and party, there could be no danger whatever, either to the States or the people, from such independence of position and consequent independence of opinion and action.

The principle of judicial independence, and the reasons on which it is founded, apply, in their utmost force, to all free representative governments. If in favorable times, and under peculiarly favorable circumstances, a dependent judiciary may be both able and upright, as in Vermont for instance, many years much to her credit, as well as advantage, it raises no doubt as to the superior wisdom and safety of a more permanent tenure of office. The instance mentioned is at the most but an exception, and is owing chiefly to the steady, uniform political character of the State, to the habit prevailing in it of never allowing the judicial appointments to be controlled by party politics, and to the commercial pursuits and interests of the people being of such limited extent as to make the suits in its courts in general of comparatively small magnitude. But there, as everywhere else, it would be both wiser and safer to have the independence of the judiciary such as to place it, not only beyond the reach, so long as its ministers conduct themselves with integrity, of either of the other powers of government, but also beyond the possible reach of popular and personal influences.

In general, notwithstanding all the formal guarantees of a written constitution, if the judge be not thus independent, what assurance or confidence can the citizen have of impartial justice, or of certain and effectual protection from unjust and unconstitutional violation of his rights? If the liberty of speech, or of the press, be assailed; if the writ of *habeas corpus* be suspended in time of peace; if the trial by jury be invaded; if the obligation of contracts be impaired, or vested rights infringed; if the citizen be deprived of his liberty, or of his property, or if his life be unconstitutionally put in jeopardy; where is the remedy, or who is to stay the hand of oppression? The only remedy is in the courts of justice; and without an independent judiciary—independent in the proper sense—it would be hopeless to think of maintaining the provisions of the Constitution for the security of these and other private rights, in their full vigor and efficacy, according to their true legitimate meaning, or of their having any settled, fixed, and uniform operation. Indeed, with a dependent, or in other words, a time-serving and temporizing judiciary, the Constitution would either cease to be the supreme paramount law, or, what would be the same in effect, would be made to mean, in all parts most essential to the security of the citizen, just what the legislative power, or popular opinion for the time being, might be disposed to have it.

District Court of the United States for the District of Massachusetts, July 31st, 1854.

THE ABBY WHITMAN.

C. F. GARDINER, *et al.*, *Libellants;* J. H. PEARSON, *et al.*, *and* GEO. CANNON, *Assignee, Claimants.*

Shipping—Lien of Material Men—Circumstances showing an Intention to waive a Lien and to rely on a personal Credit — Pleading.

THIS was a libel against the Abby Whitman, for materials alleged to have been used in her construction, under the Massachusetts Statute, entitled an "Act establishing a lien upon ships and vessels in certain cases," Stat. 1848, c. 290. The claimants contending that under the circumstances of the case no lien existed, even if the materials were so used, a hearing was had to determine this point. The claimants contended that the vessel was built by A. B. for other persons, under a contract with them, by which payments were to be made during her construction, one when she was framed, and the balance on her completion. That the whole amount due by the contract was paid by them to B., on delivery of the vessel, without notice of the libellant's claim, and that the vessel under these circumstances became, at least on the payment made when she was framed, the property of the persons for whom she was built, on the authority of *Clark* v. *Spence*, 4 Ad. & El. 448, and other cases; and that if so, or even if there was no such change in the property of the vessel, still there was no lien, under the case of *Smith* v. *The Eastern Railroad*, 1 Curtis, 253. They also claimed that the materials in question were supplied on the exclusive personal credit of the builder, and that therefore no lien arose; that there was a credit given by the libellants to him for four months, except as to one item, which was claimed to have been paid, and that a credit for such time showed an intention not to rely upon the lien, as it might extend beyond the period to which the lien was limited by the statute; and further, that by applying certain payments acknowledged to have been made by the builder, and receipted for on account, in the order of the debts, and allowing the four months credit claimed, nothing would be due at the date of the libel.

The same builder was constructing other vessels, at or

about the same time, in the same yard, and materials furnished by the libellants were employed in such other vessels.

SPRAGUE, J., said that so far as the question of property in the vessel was concerned, she was, and remained, until completion and delivery to the purchaser, the property of the builder; that one material element upon which the English decisions rested, he thought, was wanting here, viz: the fixing any payment or payments at a specific period in her construction; but if that were otherwise, still the authority of those cases had not been recognized, and the law would probably be otherwise held here; and that this case did not come within that of *The Eastern Railroad.*

As to the lien claimed on the vessel, however, he was of opinion that it did not exist, because the evidence and circumstances in the case showed an intention on the part of the libellants to rely upon the personal credit of the builder and not upon the vessel. This appeared in the first place from the libellants' own books, in which all the charges were made against the builder personally, without any reference to, or mention of any of the vessels which he was building; again, the materials appeared to have been taken from the libellants' yard by a teamster employed by the builder, and transferred to his ship-yard, while no exertions appeared to have been made by them to ascertain for what purpose these materials were to be used, as would naturally have been the case if they intended to claim a lien upon the vessels in whose construction they were employed, the right to a lien depending upon their being actually used in the construction of some vessel; and if they looked to any vessel, they ought to have known in which their materials were used, or to which they were hauled, and would naturally have made inquiries at the time; but no inquiries were made, so far as appeared, and no charge to any vessel.

Thirdly, when payments were made by B., the builder, as they were from time to time, to the amount of $2500, there was no appropriation by the libellants on their books, or receipts, to any items to distinguish their claim upon the different vessels, as would be proper, if they intended to claim liens upon them, for it would be material to know which was paid for, and which not.

The fourth circumstance bearing upon this matter was

the alleged credit of four months. In itself, that was the most material, but it was mentioned last because there was more doubt as to the fact.

His Honor reviewed the evidence upon this point, and expressed his opinion that it showed a course of conduct by the libellants, inconsistent with the intention to claim a lien, even if it did not, and he seemed to consider that the weight of the testimony was that it did, show such a credit. He was of opinion that the payments made must be applied to the account generally, and not as the plaintiff had claimed and offered evidence to show that they should be, to other items than those specified in his libel. And he came to the conclusion, upon the whole, that no lien existed, because upon all the evidence, not relying upon any of the considerations mentioned, alone, it appeared to be the libellants' intention to waive it, and rely upon the builder personally.

The matter of the four months' credit he had considered only as bearing upon the general question of a personal credit, because it was not alleged in the claimants' answers as a substantive ground of defence, although conclusive, when properly alleged and proved, if that credit would certainly extend beyond the time limited by statute, and more or less strong in proportion to the probability that it would extend beyond that time, the weight to be given to it in this case, depending on its force as evidence of an intention not to rely upon a lien. Libel dismissed, with costs for claimants.

Henry F. Durant, and *Benjamin Pond*, for the libellants; *C. B. Goodrich*, for Pearson and others; *Geo. S. Hale*, for Cannon.

THE GENERAL JACKSON. —*August*, 1854.

ISAAC BASS, *Libellant;* S. C. HUNT, *Claimant.*

Shipping — Lien for Supplies — Waiver by delay to enforce.

THIS was a libel for supplies furnished to the schooner General Jackson while in the port of Boston at various times, while the vessel was owned by residents and citizens of Maine. The last item in the libellant's account

was for articles furnished September 24, 1852. It was agreed that the vessel was purchased by the claimant in May, 1854, of her former owners, in ignorance of the present claim; that said claim had been assigned by the libellant as collateral security for a debt, which debt had been paid, and that the claim now belonged to the libellant.

It was contended by the claimant, 1st, that the libellant after a delay of nearly two years could not enforce this lien against a *bonâ fide* purchaser, without notice; and 2d, that the assignment of the claim operated as a waiver of the lien.

Sprague, J. — In regard to the first point the rule is, that the lien shall be enforced within a reasonable time, and what constitutes a reasonable time depends upon the circumstances of each case. It is generally held, that a lien of this character should be enforced as soon as the expiration of the first voyage after supplies or materials furnished, and it is only under peculiar circumstances that the lien is extended beyond such time. These liens are created for the benefit of commerce. Foreign vessels being in ports without their owners or any responsible parties connected with them, often require repairs and supplies. To enable the master to obtain these this extraordinary lien is given. It is founded in the necessities of commerce. But it is to be remembered that these liens are secret, and there is no place where other parties may inquire and learn their existence or extent. Therefore it is fit and proper that they should be promptly enforced and extinguished.

To apply these principles to the present case, it appears that the last item of supplies furnished this vessel was in 1852, about eighteen months before the filing of the libel, and during all that period the vessel was plying between this port and the ports of Maine, as often as once a month, giving the libellant ample opportunity to enforce his claim, had he seen fit, long before the sale of the vessel to the present claimant. It must therefore be held that the libellant has waived his lien.

As to the second point, the assignment of the claim as security for a debt which had since been paid, would not of itself be a waiver of the lien.

Libel dismissed, with costs for the claimant.

Benjamin Pond, for libellant.

H. C. Hutchins, for claimant.

Supreme Judicial Court of Massachusetts, Suffolk, ss. March Term, 1854.

NORWAY PLAINS COMPANY *vs.* BOSTON AND MAINE RAILROAD.[1]

Common Carriers — Determination of liability — Notice to Consignee.

Proprietors of a railroad, who transport goods over their road for hire, and deposit them in their warehouse without additional charge, until the owner or consignee has a reasonable time to take them away, are not liable, as common carriers, for the loss of the goods by fire, without negligence or default on their part, after the goods are unladen from the cars and placed in the warehouse; but are liable as warehousemen, only for want of ordinary care; although the owner or consignee has no opportunity to take the goods away before the fire.

It seems, that the proprietors of a railroad are not obliged to give notice to the consignee of the arrival of the goods, transported by them, in order to exonerate themselves from their liability as common carriers.

ACTION of contract upon the agreement of the defendants to transport certain goods from Rochester (N. H.) to Boston.

The parties submitted the case to the decision of the court upon the following statement of facts: "The defendants received of the plaintiffs at Rochester packages and bales of merchandise, to be transported to Boston. Receipts specifying the date of the delivery of the goods to the defendants, and containing a description of them, were signed by the agent of the corporation, copies of which are annexed." These receipts, the form of which is printed, are respectively dated October 31st, and November 2d, 1850, and the defendants thereby acknowledge that they have received the goods "numbered and marked as above, which the company promises to forward by its railroad, and deliver to —— or order at its depot in Boston; freight therefor to be paid."

The train, in which the goods mentioned in the receipt dated November 2d, 1850, were sent, usually arrives in Boston at about half past twelve o'clock; but on the day of its arrival, November 4th, 1850, did not reach the depot until a later time. Ames, the truckman employed by the plaintiffs to take their freight from the defendants' depot in Boston, and whose principal business it is to cart goods from said depot for the plaintiffs and others, went for the goods, and waited from about two o'clock until about three and half o'clock, in the afternoon, and was then told by the agents of the defendants that they

[1] 1 Gray, 263.

were in the hindmost car, which was then out on the wharf and inaccessible to trucks or carts, and could not then be delivered; and no time was stated when they might be expected to be delivered; and he, being satisfied that they could not be reached until it would be too late to transport and deposit them where they were to go that day, and no notice being given when they would be delivered, departed, intending to call for them early the next morning. In order that the goods should be transported to the place where the truckman was to carry them, it was necessary to receive them by three and a half or four o'clock, the days being short, and the stores being closed about sunset. During the ensuing night, or the morning of November 5th, 1850, before daylight, the depot, with the packages and bales of merchandise belonging to the plaintiffs, was consumed by fire.

"When a freight train arrives, it is usual to run it into the depot as far as possible and unlade the cars which are inside, and relade them with the outward freight, and then run them off on to another track; so that those outside are detained there until those inside are unladen, are reladed and passed forward; and this was the course pursued at this time, and caused corresponding delay in the delivery of the goods in the hindmost cars: and this was a reasonable course.

"Said Ames had authority from the plaintiff to take from said depot any goods arriving there without special directions or notice, and was in the frequent habit of so doing, and therefore was allowed by the railroad, on the arrival of the train, to inspect the way bill, to inform himself what goods were on board the train; and no notice was usually given him other than this.

"The gates of the depot were closed at half past four o'clock. The goods described in the receipt dated November 2d were discharged from the cars, and put on the platform in a fit state for delivery, before five o'clock, but at what precise hour is not known; and this was the usual course when goods from any cause were not delivered before the gates were closed. But after Ames left, the cars were put in such a position outside of the depot that the said goods could have been taken directly from them before four and a half o'clock, had Ames remained; though that would not have been in the general course of delivery, and could only have been done by an arrangement with Ames

for that purpose; and no offer or suggestion was made to him that they could be so taken. Ames frequently took goods from the cars themselves without waiting for their being discharged on to the platform, when it was for the mutual convenience of both parties that he should do so.

"The goods, described in the receipt dated October 31st, 1850, arrived on Saturday, the 2d of November, and were discharged from the cars some time during that day, and were ready for delivery at least as early as Monday morning. No notice had been given to the plaintiffs of their arrival, otherwise than that Ames knew that they were so ready, and could have taken them, so far as said railroad was concerned, if he had seen fit. The agent of the plaintiffs where these goods were put on the cars knew that, according to the usual course of the trains they would arrive in Boston Saturday, about noon."

The arguments were had at November term, 1853.

C. G. Loring, for the plaintiffs.

R. Choate, and *G. Minot*, for the defendants.

Shaw, C. J. — The liability of carriers of goods by railroads, the grounds and precise extent and limits of their responsibility, are coming to be subjects of great interest and importance to the community. It is a new mode of transportation, in some respects like the transportation of ships, lighters, and canal boats on water, and in others like that by wagons on land; but in some respects it differs from both. Though the practice is new, the law by which the rights and obligations of owners, consignees, and of the carriers themselves, are to be governed, is old and well established. It is one of the great merits and advantages of the common law, that instead of a series of detailed practical rules, established by positive provisions, and adapted to the precise circumstances of particular cases, which would become obsolete and fail, when the practice and course of business, to which they apply, should cease or change, the common law consists of a few broad and comprehensive principles, founded on reason, natural justice, and enlightened public policy, modified and adapted to the circumstances of all the particular cases which fall within it. Those general principles of equity and policy are rendered precise, specific, and adapted to practical use, by usage which is the proof of their general fitness and common convenience, but still more by judicial exposition, so that, when in a course

of judicial proceeding, by tribunals of the highest authority, the general rule has been modified, limited and applied according to particular cases, such judicial exposition, when well settled and acquiesced in, becomes itself a precedent, and forms a rule of law for future cases, under like circumstances. The effect of this expansive and comprehensive character of the common law is, that whilst it has its foundation in the principles of equity, natural justice, and that general convenience which is public policy; although these general considerations would be too vague and uncertain for practical purposes, in the various and complicated cases of daily occurrence, in the business of an active community; yet the rules of the common law, so far as cases have arisen and practices actually grown up, are rendered, in a good degree, precise and certain, for practical purposes, by usage and judicial precedent. Another consequence of this expansive character of the common law is, that when new practices spring up, new combinations of facts arise, and cases are presented for which there is no precedent in judicial decision, they must be governed by the general principle applicable to cases analogous, but modified and adapted to new circumstances, by reasonable considerations of fitness, propriety and justice, which grow out of those circumstances. The consequence of this state of the law is, that when a new practice or new course of business arises, the rights and duties of parties are not without a law to govern them: the general considerations of reason, justice and policy, which underlie the particular rules of the common law, will still apply, modified and adapted, by the same considerations, to the new circumstances. If these are such as to give rise to controversy and litigation, they soon, like previous cases, come to be settled by judicial exposition, and the principles thus settled soon come to have the effect of precise and practical rules. Therefore, although steamboats and railroads are but of yesterday, yet the principle which governs the rights and duties of carriers of passengers, and also those which regulate the rights and duties of carriers of goods, and of the owners of goods carried, have a deep and established foundation in the common law, subject only to such modifications as new circumstances may render necessary and mutually beneficial. . . . .

We understand the merchandise depot, [referred to in the statement of facts,] to be a warehouse, suitably inclosed

and secured against the weather, thieves and other like ordinary dangers, with suitable persons to attend it, with doors closed in the night time, and locked like other warehouses, used for the storage of merchandise; that it is furnished with tracks, on which the loaded cars run directly into the depot to be unloaded; that there are platforms on the sides of the track on which the goods are first placed; that if not immediately called for and taken by the consignees, they are separated according to their marks and directions, and placed by themselves in suitable situations within the depot, there to remain a reasonable and convenient time, without additional charge, until called for by parties entitled to receive them.

The question is, whether, under the circumstances of this case, the defendants are liable.

That railroad companies are authorized by law to make roads as public highways, to lay down tracks, place cars upon them, and carry goods for hire, are circumstances which bring them within all the rules of the common law, and make them eminently common carriers. Their iron roads, though built, in the first instance, by individual capital, are yet regarded as public roads, required by common convenience and necessity, and their allowance by public authority can only be justified on that ground. The general principle has been uniformly so decided in England and in this country, and the point is to ascertain the precise limits of their liability. This was done to a certain extent in this court, in a recent case, with which, as far as it goes, we are entirely satisfied. *Thomas* v. *Boston and Providence Railroad Co.*, 10 Met. 472.

Being liable as common carriers, the rule of the common law attaches to them, that they are liable for losses occurring from any accident which may befall the goods during the transit, except those arising from the act of God, or a public enemy. It is not necessary now to inquire into the weight of those considerations of reason and policy on which the rule is founded; nor to consider what casualty may be held to result from an act of God, or a public enemy; because the present case does not turn on any such nice distinction. It is sufficient, therefore, to state and affirm the general rule. In the present case, the loss resulted from a fire, of which there is no ground to suggest that it was an act of God; and it is equally clear that it did not result from any default or negligence on the part of

the company, though the goods remained in their custody. If, at the time of the loss, they were liable as common carriers, they must abide by the loss; because, as common carriers, they were bound as insurers, to take the risk of fire, not caused by the act of God, and in such case, no question of default or negligence can arise. Proof that it was from a cause for which they neither by themselves nor by their servants were in any degree chargeable, could amount to no defence, and would therefore be inadmissible in evidence. If, on the contrary, the transit was at an end, if the defendants had ceased to have possession of the goods as common carriers, and held them in another capacity, as warehouse-men, then they were responsible only for the care and diligence which the law attaches to that relation; and this does not extend to a loss by an accidental fire, not caused by the default or negligence of themselves, or of servants, agents or others for whom they are responsible.

The question then is, when and by what act the transit of the goods terminated. It was contended, in the present case, that in the absence of express proof of contract or usage to the contrary, the carrier of goods by land is bound to deliver them to the consignee, and that his obligation as carrier does not cease till such delivery.

This rule applies, and may very properly apply, to the case of goods transported by wagons and other vehicles, traversing the common highways and streets, and which therefore can deliver the goods at the houses of the respective consignees. But it cannot apply to railroads, whose line of movement and point of termination are locally fixed. The nature of the transportation, though on land, is much more like that by sea, in this respect, that from the very nature of the case, the merchandise can only be transported along one line, and delivered at its termination, or at some fixed place by its side, at some intermediate point. The rule in regard to ships is very exactly stated in the opinion of Buller, J. in *Hyde* v. *Trent and Mersey Navigation Co.* 5 T. R. 397. "A ship trading from one port to another has not the means of carrying the goods on land; and, according to the established course of trade, a delivery on the usual wharf is such a delivery as will discharge the carrier."

Another peculiarity of transportation by railroad is, that the car cannot leave the track or line of railroads on which it moves; a freight train moves with rapidity, and makes

very frequent journeys, and a loaded car, while it stands on the track, necessarily prevents other trains from passing or coming to the same place; of course it is essential to the accommodation and convenience of all persons interested, that a loaded car, on its arrival at its destination, should be unloaded, and that all the goods carried on it, to whomsoever they may belong, or whatever may be their destination, should be discharged as soon and as rapidly as it can be done with safety. The car may then pass on to give place to others, to be discharged in like manner. From this necessary condition of the business, and from the practice of these transportation companies to have platforms on which to place goods from the cars, in the first instance, and warehouse accommodation by which they may be securely stored, the goods of each consignment by themselves in accessible places, ready to be delivered, the court are of opinion that the duty assumed by the railroad corporation is — and this being known to owners of goods forwarded, must in the absence of proof to the contrary, be presumed to be assented to by them so as to constitute the implied contract between them — that they will carry the goods safely to the place of destination, and there discharge them on the platform, and then and there deliver them to the consignee or party entitled to receive them, if he is there ready to take them forthwith; or if the consignee is not there ready to take them, then to place them securely, and keep them safely a reasonable time, ready to be delivered when called for. This, it appears to us, is the spirit and legal effect of the public duty of the carriers; and of the contract between the parties, when not altered or modified by special agreement, the effect and operation of which need not here be considered.

This we consider to be one entire contract for hire; and although there is no separate charge for storage, yet the freight to be paid, fixed by themselves, as a compensation for the whole service, is paid as well for the temporary storage, as for the carriage. This renders both the services, as well the absolute undertaking for the carriage as the contingent undertaking for the storage, to be services undertaken to be done for hire and reward. From this view of the duty and implied contract of the carriers by railroad, we think there result two distinct liabilities; first, that of common carriers, and afterwards that of keepers for hire. or warehouse keepers; the obligations of each of which are regulated by law.

We may then say, in the case of goods transported by railroad, either that it is not the duty of the company as common carriers, to deliver the goods to the consignee, which is more strictly conformable to the truth of the facts; or, in analogy to the old rule, that delivery is necessary, it may be said that delivery by themselves as common carriers, to themselves as keepers for hire, conformably to the agreement of both parties, is a delivery which discharges their responsibility as common carriers. If they are chargeable after the goods have been landed and stored, the liability is one of a different character, one which binds them only to stand to losses occasioned by their fault or negligence. Indeed, the same doctrine is distinctly laid down in *Thomas* v. *Boston and Providence Railroad*, 10 Met. 472, with the same limitation. The point that the same company, under one and the same contract, may be subject to distinct duties, for a failure in which they may be liable to different degrees of responsibility, will result from a comparison of the two cases of *Garside* v. *Trent and Mersey Navigation Co.* 4 T. R. 581, and *Hyde* v. *Same Company*, 5 T. R. 389. See also *Van Santvoord* v. *St. John*, 6 Hill, 157, and *McHenry* v. *Philadelphia, Wilmington and Baltimore Railroad*, 4 Harrington, 448.

The company, having received an adequate compensation for the entire service, if they store the goods, are paid for that service; they are depositaries for hire, and of course responsible for the security and fitness of the place and all precautions necessary to the safety of the goods, and for ordinary care and attention of their servants and agents, in keeping and delivering them when called for. This enforces the liability of common carriers, to the extent to which it has been uniformly carried by the common law, so far as the reason and principle of the rule render it fit and applicable, that is, during the transit, and affords a reasonable security to the owner of goods for their safety, until actually taken into his own custody.

The principle, thus adopted, is not new; many cases might be cited; one or two will be sufficient. *Rowe* v. *Pickford*, 8 Taunt. 83; . . . . *In re Webb*, Ib. 443. . . . .

This view of the law, applicable to railroad companies, as common carriers of merchandise, affords a plain, precise and practical rule of duty, of easy application, well

adapted to the security of all persons interested; it determines that they are responsible as common carriers until the goods are removed from the cars and placed on the platform; that if, on account of their arrival in the night-time, or at any other time, when by the usage and course of business, the doors of the merchandise depot or warehouse are closed, or for any other cause they cannot then be delivered; or if for any reason the consignee is not there ready to receive them, it is the duty of the company to store them and preserve them safely, under the charge of competent and careful servants, ready to be delivered, and actually deliver them when duly called for by parties authorized and entitled to receive them; and for the performance of these duties after the goods are delivered from the cars, the company are liable, as warehousemen, or keepers of goods for hire.

It was argued in the present case, that the railroad company are responsible as common carriers of goods, until they have given notice to consignees of the arrival of goods. The court are strongly inclined to the opinion, that in regard to the transportation of goods by railroad, as the business is generally conducted in this country, this rule does not apply. The immediate and safe storage of the goods on arrival, in warehouses provided by the railroad company, and without additional expense, seems to be a substitute better adapted to the convenience of both parties. The arrivals of goods at the larger places, to which goods are thus sent, are so numerous, frequent and various in kind, that it would be nearly impossible to send special notice to each consignee, of each parcel of goods or single article forwarded by the trains. We doubt whether this is conformable to usage, but perhaps we have not facts enough disclosed in this case to warrant an opinion on that point. As far as the facts on this point do appear, it would seem probable, that persons frequently forwarding goods, have a general agent, who is permitted to inspect the way-bills, ascertain what goods are received from his employers, and take them as soon as convenient after their arrival. It also seems to be the practice for persons forwarding goods to give notice by letter, and inclose the railroad receipt, in the nature of a bill of lading, to a consignee or agent, to warn him to be ready to receive them. From the two specimens of the form of receipt given by these companies, produced in the present

case, we should doubt whether the name of any consignee or agent is usually specified in the receipt and on the way-bill. The course seems to be, to specify the marks and numbers, so that the goods may be identified on inspection and comparison with the way-bill. If it is not usual to specify the name of a consignee, in the way-bill, as well as on the receipt, it would be impossible for the corporation to give notice of the arrival of each article and parcel of goods. In the two receipts produced in this case, which are printed forms, a blank is left for the name of a consignee, but it is not filled, and no consignee in either case is named. The legal effect of such a receipt and promise to deliver, no doubt is, to deliver to the consignor or his order. If this is the usual or frequent course, it is manifest that it would be impossible to give notice to any consignee; the consignor is *primâ facie* the party to receive, and he has all the notice he can have. But we have thought it unnecessary to give a more decisive opinion on this point, for the reason, already apparent, that in these receipts no consignee was named, and for another equally conclusive, that Ames, the plaintiffs' authorized agent, had actual notice of the arrival of both parcels of goods.

In applying these rules to the present case, it is manifest that the defendants are not liable for the loss of the goods. Those which were forwarded on Saturday arrived in the course of that day, lay there on Sunday and Monday, and were destroyed in the night between Monday and Tuesday. But the length of time makes no difference. The goods forwarded on Monday were unladen from the cars, and placed in the depot before the fire. Several circumstances are stated in the case, as to the agent's calling for them, waiting, and at last leaving the depot before they were ready. But we consider them all immaterial. The argument strongly urged was, that the responsibility of common carriers remained until the agent of the consignee had an opportunity to take them and remove them. But we think the rule is otherwise. It is stated, as a circumstance, that the train arrived that day at a later hour than usual. This, we think, immaterial; the corporation do not stipulate, that the goods shall arrive at any particular time. Further, from the very necessity of the case, and the exigencies of the railroad, the corporation must often avail themselves of the night-time, when the road is less

occupied for passenger cars; so that goods may arrive and be unladen, at an unsuitable hour in the night, to have the depot open for the delivery of the goods. We think, therefore, that it would be alike contrary to the contract of the parties, and the nature of the carriers' duty, to hold that they shall be responsible as common carriers, until the owner has practically an opportunity to come with his wagon and take the goods; and it would greatly mar the simplicity and efficacy of the rule, that delivery from the cars into the depot terminates the transit. If, therefore, for any cause, the consignee is not at the place to receive his goods from the car as unladen, and in consequence of this they are placed in the depot, the transit ceases. In point of fact, the agent might have received the second parcel of goods in the course of the afternoon on Monday, but not early enough to be carried to the warehouses, at which he was to deliver them; that is, not early enough to suit his convenience. But for the reasons stated, we have thought this circumstance immaterial, and do not place our decision for the defendants, in regard to this second parcel, on that ground. *Judgment for the defendants.*

Vice Admiralty Court, Lower Canada, June 2, 1854.

THE NIAGARA, *Taylor;* THE ELIZABETH, *Nowell.*

Collision — Course to be pursued by Vessels in danger of Colliding — Lookout — Lights.

THESE cases originated in a collision, which took place on the third of November last, between the ship Niagara, while sailing down the river St. Lawrence on her homeward voyage to Liverpool, and the bark Elizabeth, coming up in tow of the steamer Providence, under the circumstances noticed in the following judgment of the Court:

THE COURT — (HON. HENRY BLACK.) The Niagara, a vessel of about 422 tons burthen, laden principally with grain and deals, sailed from Quebec on her homeward voyage to Liverpool, in the afternoon of Thursday, the 3d of November last, in charge of a regular branch pilot; and at about the hour of a quarter to seven on the same

day had gone round Point Levi, and was about abreast of Indian Cove, the wind being then at west by north, or west-north-west, blowing a moderate breeze, the tide being flood and the ship having all its sails set except the studding sails, and being about mid-channel, or rather to the southward of it, and going down the river at the rate of about three miles an hour. She had passed two ships at anchor, the one on the starboard and the other on the port side, the one apparently lying on the north side of the channel and the other on the south side of it. At the same time the bark Elizabeth, a vessel having between three and four hundred tons of railroad iron on board, was coming up the river St. Lawrence, on her outward voyage from England to Quebec, in charge of a regular branch pilot, and in tow of the steamer Providence, which was engaged to take her to her intended wharf at Point Levi. The tow-line was about thirty fathoms in length; she had all her sails furled and her yards braced up, the wind being ahead, and was going at the rate of about five miles an hour, that is, two miles faster than the flood tide, which carried her about three miles an hour. The moon was then about three days old. At about a quarter to seven the Elizabeth, and the steamboat in tow of which she was, had also got abreast of Indian Cove. The night at the time seems from the evidence to have been reasonably clear, and sufficiently so for lights to be seen at a moderate distance; though there is some slight discrepance on this point, the witnesses from the Elizabeth and from the steamer declaring the night was very clear and starlight, and that the moon had been visible early in the evening, and that they could see both shores, and the light on board the ships in the harbor and the lights of the town: while the witnesses from the Niagara say that it was clear to the westward, but hazy to the eastward, and that the moon was clouded and not to be seen; they do not however pretend that lights could not be seen at a reasonable distance, in fact the look-out man of the Niagara (Owen Evans) says that it was a pretty clear night, and that he saw the steamer Providence about twenty minutes before the collision which forms the subject of the present controversy. It is sufficiently proved that the Niagara had a light at her bowsprit end, "a reflecting powerful light;" that the steamer had two ordinary lights, one on each paddle box, and a bright red light forward; and that the

Elizabeth had a light in her starboard fore rigging, about sixteen feet above the deck. It appears that each of the three vessels was navigated by a competent number of officers and men, and was staunch, tight, and in good order.

Under these circumstances a collision took place between the Niagara and the Elizabeth, the Niagara, according to some of the witnesses, striking her cut-water against the starboard bow of the Elizabeth, but according to others the starboard bow of each vessel striking the starboard bow of the other. . . . . .

With regard to the circumstances which immediately preceded and occasioned the collision, the evidence, as usually occurs in like cases, is conflicting. . . . .

No blame is attributed by either party to the steamer, and the only question raised as to the Elizabeth's action, is, To show an omission whether she exercised her power of sheering properly or improperly, and it may be that in porting her helm, when the Niagara was close upon her, she did right. The general rule is, that when two vessels are approaching each other, both having the wind large, and are approaching each other, so that if each continued in her course, there would be danger of collision, each shall port helm, so as to leave the other on the larboard hand in passing; but it is not necessary that because two vessels are proceeding in opposite directions, there being plenty of room, that the one vessel should cross the course of the other, in order to pass her on the larboard. The questions arising in these actions seem to be :

1. Whether from the whole tenor of the evidence it appears that there was a proper and efficient look-out kept on board the Niagara, and whether timely notice was given by the look-out man, of the proximity of the steamer and the Elizabeth ?

2. Whether at the time when the lights of the steamer were seen by the Niagara, the Niagara was pursuing a direct course down the river, or was, in fact, standing too much to the southward, and crossing the channel and the course of the steamer and her tow ?

3. Whether, when the danger of collision was seen by the Niagara's pilot and people, the most seamanlike and proper means were adopted by them to avoid the danger, and more particularly whether it was right to put her helm a starboard ?

4. Whether, when the danger of collision was seen by the people of the Elizabeth, the most seamanlike and proper means were adopted by them to avoid the danger, and more particularly whether it was right to put her helm to port?

5. And generally, whether any rule of navigation or of seamanship was violated by either, and which of the vessels, or whether there was any fault, neglect of duty, or want of proper precaution or skill on the part of those in charge of either, and of which vessel; or did the accident arise from circumstances over which neither vessel had any control; and is it therefore to be considered as an unavoidable misfortune, for which neither can be blamed or held responsible?

Upon these several points, the Court will avail itself of the long practical experience and great professional skill of Captain Jesse Armstrong, the Harbor Master of Quebec and one of the Wardens of the Trinity House, and of Lieutenant Edward D. Ashe, of the Royal Navy and Superintendent of the Observatory at Quebec.

At a subsequent sitting of the Court, Captain Armstrong and Lieutenant Ashe, who had heard the arguments in the case as assessors, gave in the following answers to the questions submitted for their consideration:

"1. The look-out man states that he saw the steamer Providence about twenty minutes before the collision; but no precautions were taken by the Niagara to avoid her until the steamer was so close, that notwithstanding the Niagara answered her helm quickly, she grazed the after part of the steamer with her martingale. From this one of two things is evident, either the pilot or officer in charge of the deck, did not see the steamer Providence in time to avoid her, in which case there was a want of proper look-out; or, if he did see her, there was great carelessness shown in approaching so close to her when he had plenty of room, and might have passed either to the northward or southward of the steamer and her tow. The evidence given by Charles Nolet, a third party, and a calm spectator of the collision, is of much importance. He says: 'and the witness believes that the steamer was not perceived by the Niagara until too late, because he is certain that if she had been seen in time by the Niagara, and had then the necessary measures been taken, the collision would have been easily avoided.'

"2. We believe that the Niagara was steering a little to the south shore in order to pass the Hampden on the star-

board side; but in so doing there was nothing to prevent her, the Niagara, keeping a bright look-out and taking proper measures to avoid lights that might have been seen ahead.

"3. When the pilot appears to have seen the danger of collision, the only thing that could be done at that time, was putting the helm of the Niagara a starboard.

"4. The Elizabeth followed the rules laid down for vessels meeting each other; and it would have been well for all parties if her tug had set her the example in porting her helm in time. Be this as it may, it is pretty clear that if a tug tries to pass on one side of a vessel, and her tow tries to pass on the other side, without either cutting, slashing or letting go the tow rope, a collision will inevitably take place. If it was supposed by those on board of the Elizabeth, that a collision was unavoidable, then they did right in porting their helm in order to get the shock on the strongest part of the vessel.

"5. There was no want of seamanship shown on either side, but a great want of caution on the part of the Niagara. It should be imperative on all vessels, particularly steamers from the quickness of their motions, that they be compelled to carry their lights according to law, which would in all cases determine two very essential points; first, that she is a steamer; secondly, how she is steering, the latter a most important point, which generally can be easily determined when proper lights are carried; that is to say, a red light at the bow, and a white light at the mast head or flag-staff (see the 50th Trinity House by-law), which regulation the steamer Providence did not comply with at the time of the collision. It appears to us that if the steamer Providence had been keeping a good look-out, and had immediately put her helm a port, which she was bound to do on first perceiving the Niagara, no collision would have taken place. In conclusion, we are of opinion that the Niagara is responsible for the damages done to the Elizabeth."

The Court. — The professional gentlemen by whom I have been assisted in this case, are of opinion, and I concur with them, that the Elizabeth is not chargeable with any misconduct or mismanagement as regards the circumstances which led to the collision. Even with respect to her porting her helm when the Niagara was close upon her,

those gentlemen think that she was fully justified, if she thought the collision inevitable, and only wished to make it as harmless as possible. That this was the opinion of those on board her, is clear from the evidence; their only hope then was that the Niagara might pass between the Elizabeth and the steamer, and a man was ready on board the Elizabeth to cut the tow rope if necessary. I also concur with those gentlemen in thinking that there was sufficient neglect or misconduct on the part of the Niagara to make her liable to the owners of the Elizabeth, for the damages resulting from the collision. There was no proper and sufficient look-out on board the Niagara, nor were the proper means adopted for avoiding collision after the time when the steamer's lights were seen by the Niagara over her starboard bow. Her having adopted the most seamanlike and proper course when the collision was all but inevitable, does not exempt her from responsibility.

Neither in the pleadings nor in the evidence is there any allegation that the fault was with the steamer. It may be possible that if she had ported her helm at a very early period and gone to the northward, the vessels might have passed clear; but there was then evidently sufficient room for them to pass clear without her doing so; and it is far from improbable that her doing so might have brought her into contact with the Niagara, as the steamer's people assert; and if she had done so, and mischief had ensued, she might have been liable; for, as is correctly said by Chief Justice Best: "Although there may be a rule of the sea, yet a man, who has the management of one ship, is not allowed to follow that rule, to the injury of the vessel of another, when he could avoid the injury, by pursuing a different course."[1] Although there may be some discrepance in the evidence on this point, yet I see nothing to justify my concluding that there was not a sufficient look-out on board the steamer. As regards her lights, I incline to think that she complied substantially with the Trinity House rule,[2] as far as circumstances allowed. She had the bright

[1] Handyside v. Wilson, 3 Carrington & Payne, 538.

[2] That all steamboats, whether at anchor, or under way, in the river St. Lawrence, within the port of Quebec, shall at night show a bright red light in the bow, and a bright white light at the mast head, and if any such boat has no mast, the white light shall be on the stern sufficiently high to be seen, over the paddle boxes; under a penalty not exceeding ten pounds currency, to be recoverable from the master or other person in charge of such steamboat, for every contravention of this regulation. — 50th sec. of By-laws made 12th April, 1850.

red light in the bow, and a bright white light over each paddle box. It does not appear that she had any mast, and being engaged in towing it may be that she could not carry a flag-staff at the stern, without its being in the way of the tow rope; and if so, she seems to have done all that could be expected under the circumstances, towards obeying the rule, by carrying white lights on each side sufficiently high to be seen over the paddle boxes. In point of fact the Niagara's people saw these lights, and even supposing them to have been insufficient, the accident did not arise from such insufficiency. Unless it appeared that the accident arose exclusively from the misconduct of the steamer, the responsibility could not be transferred to her so as to relieve the other vessels. I am not called upon in the present case to do more than pronounce judgment as between the Elizabeth and the Niagara; nor will my judgment prevent the recourse of either, against the steamer, if the fault were exclusively hers, a point which is certainly not established by evidence in the present suit; the judgment is therefore in favor of the Elizabeth and against the Niagara.

From this judgment the owner of the Niagara asserted on the 14th inst., an appeal to Her Majesty in Her Privy Council.

Mr. *Alleyn*, for the *Elizabeth*.

Messrs. *Stuart* & *Vannovous*, for the *Niagara*.

Abstracts of Recent American Decisions.

SELECTIONS FROM 2 WALLACE, JR.

[United States Circuit Court. — Third Circuit.]

Abandonment. See *Collision*.

Agency.—Where a larger vessel — a ship — is in tow of a small one — a steam tug — the latter is in law regarded as the servant of the former; and being thus its agent, and so bound to obey its orders, is not responsible for damage in the proper course of the employment.—*Smith* v. *The Creole and The Sampson*.

Assignment.—1. A general voluntary assignment, valid by the laws of one of the United States — though assumed to be void if it had been made in another — will carry property in that other against an attaching creditor there.—*Caskie* v. *Webster*.

2. The case of *Ingraham* v. *Geyer*, decided A. D. 1816, in the Supreme Court of Massachusetts, in which an opposite doctrine was held, is not law.—*Ib*

Clerk's Commissions.—A Clerk of the Circuit Courts of the United States is not, under the act of February 26th, 1853, relating to "Clerks' Fees," nor otherwise, entitled to commissions for "receiving, keeping, and paying out money," unless the fund has actually passed into the Court, or through the clerk's official hand, or has been agreed to be considered as having done so. The fact that the money is subject to the decree of the Court, it not being *in* the Court's registry, is not enough to give the clerk a right to commissions.—*Ex parte Plitt.*

Collision.—1. Although the Court cannot establish a rule to bind vessels navigating the high seas to carry signal lights, yet where one vessel does so and another does not, the Court, in case of a collision, will go some way to treat the dark boat as the wrong doer.—*Barque Delaware* v. *Steamer Osprey.*

2. The Court going in advance of hitherto adjudicated cases, would seem to enforce the obligation upon all boats navigating bays and rivers, not only to show lights on an approach, but to carry them constantly.—*Ib.*

3. Where a vessel is injured and sunk by collision in such a place, or under such circumstances, that for a small sum of money in comparison with the value of the vessel and cargo, she can be raised and repaired, and the cargo recovered with slight damage, her owners have no right to abandon her and claim for a total loss. The doctrine of abandonment as connected with cases of insurance, has not been imported into Courts of Admiralty.—*Clarke* v. *The Steamer Fashion.*

4. A vessel which moors alongside of another at a wharf or elsewhere, becomes responsible to the other, for all the injuries resulting from her proximity, which human skill or precaution could have guarded against. —*Vantine* v. *The Lake.*

5. The schooner L., on entering a dock at high tide, was directed by her consignees to be moored to an adjoining wharf of which they were lessees, outside of the M. J., a smaller vessel. There was not in the dock during part of the ebb, enough water for The L., though there was sufficient for The M. J.; of which fact the consignees, but not the master of The L., were aware. No objection was made at the time from The M. J., nor any caution given. On the tide receding, The L., on this account and from the bottom of the dock being banked up in the middle from accidental causes, (with which the consignees were also acquainted,) careened over on The M. J., crushing her timbers, and causing her to fill and sink. As soon as the danger was perceived, a measure of prevention was suggested by The M. J., but rejected as useless.

Held, that The L. was bound to know the depth of water in the dock, or at any rate was responsible for the directions of the consignees, who had full knowledge; and that she had not taken proper precaution before or after the injury. The L condemned in damages.—*Ib.*

6. Besides the costs of repairs in this case, charges for wharfage while repairing; for the time of one of the owners, and of the crew in raising and clearing out the injured vessel; and for the loss of profits to the vessel while sunk, and during the time she was being repaired, allowed by the Court in the assessment of damages.—*Ib.*

Conflict of Laws. See *Assignment.*

Consul.—A consul of a Foreign Power, though not entitled to represent his sovereign in a country where the sovereign has an ambassador, is entitled to intervene for all *subjects* of that Power interested; and though he should not set forth the particulars of his claim, still it will do if they can be fully gathered from the allegations of the libel and the case it sets forth.—*Robson* v. *The Huntress.*

Copyright.—A prose translation (having no qualities of a paraphrase)

of a copyright prose romance, which the author had caused himself to be translated in a way he liked, and copyrighted, is not an infringement of the author's copyright of the original.—*Stowe* v. *Thomas.*

Damages. See *Collision — Fugitive Slave Law.*

Equity —Where a bill sets forth such leading facts as do not, when analyzed, show a case of fraud or mistake — allegations or averments in the bill that there was fraud or mistake, and the expressions "fraudulently," "deceitfully," "by mistake," &c., interspersed throughout it, will not bring the case within equitable jurisdiction, *even on a demurrer to the bill.* —*Magniac* v. *Thomson.*

2. Admitting, for the sake of argument, that the allegation of a mistake of the law would give jurisdiction to a court of equity in a common case, and be a ground for relief; yet the court will not listen to the allegation that a member of the bar has made such a mistake. It can hardly be successfully averred even by the party whose counsel, he would confess, has made it.—*Ib.*

3. Where one, having arrested his debtor defendant on a *ca. sa.*, sets him at liberty on certain terms, at *his* instance, it being "expressly acknowledged" by the defendant that this is done "for his accommodation, *without any prejudice whatever* to arise to the plaintiff's right by the enlargement" as aforesaid, "or *otherwise howsoever;*" the debt is paid at law. No further execution of any sort can be issued there. And the agreement having been drawn and signed by the plaintiff's own attorney, a learned and able counsellor at law, a court of equity will not interpose to enjoin the defendant from pleading this discharge as payment, by allegations in a bill *demurred to*, that there was either a mistake common to both parties as to the effect of the agreement; or else that the plaintiff not knowing its effect, while the defendant did know it, it would be a fraud in the defendant now to profit of the plaintiff's misconception or ignorance of what he was doing; and set up at law the payment by his liberation on the *ca. sa.*—*Ib.*

4. Where a court of equity, having heard a case on full proofs, is well satisfied of the originality of an invention, the regularity of a patent, and of the fact of infringement, it will not send the case to a jury to have its verdict prior to granting a perpetual injunction. It will grant it at once, especially if the questions in the case, though questions of fact, are of that kind that a court can decide them on the testimony of men of science, as well as, or better than a jury; and where a jury trial would be long, costly or troublesome.—*Goodyear* v. *Day.*

Evidence.—1. On an indictment for treason, everything tending to show that there was an intention to make public resistance to a law of the United States, is entirely evidence in chief, and cannot be received in rebuttal. —*United States* v. *Hanway.*

2. On an indictment for treason, the intent of the act, being essential, it is competent to show, that a long time (say within nine months) before the alleged treasonable occurrence. facts had occurred, and rumors were prevalent in the neighborhood, which would explain certain particulars relied on, to show treasonable intent, and make them show a different intent. —*Ib.*

3. A person who stands indicted of treason along with the defendant in *another* indictment not now trying, is a competent witness for him in an indictment now trying, and in which such person is not included. —*Ib.*

4. On an indictment under a law which makes criminal certain acts done on board a vessel owned in whole or in part by a citizen of the United States, an American Registry is not even *primâ facie* evidence of such ownership; though such registry is made by the government only on the

pre-supposition of such ownership, and after oath by one or more persons of such ownership by them. Nor is general reputation of such ownership any evidence of it. Ownership in such a case is a fact to be proved as other facts.—*United States* v. *Brune.*

5. Parol evidence cannot be received to show in what sense a testator used certain words, they being well settled terms of law: e. g., to show that a testator, who lived most of his life in England, though technically domiciled in Pennsylvania, used the term 'heir at law,' not in the Pennsylvania statute sense, this being its true and settled legal sense, but in the popular sense of heir by the English Common Law.—*Aspden's Estate.*

Fugitive Slave Law.—A law of Congress enacts, that if any person shall *harbor or conceal* a fugitive from labor after notice that he or she is so, such person *shall forfeit and pay* $500, to be recovered by action of debt; *saving moreover* to the owner of such fugitive a *right of action on account of the injuries*, &c.

1. Notice here means knowledge; and harboring means entertaining or sheltering a fugitive with the purpose of encouraging him in his desertion of his master; with the purpose to further his escape, and to impede and frustrate the master's reclamation of him. 'Harboring' is not here synonymous with 'concealing' used in the same phrase with it: and there may be harboring without any concealment.—*Van Metre* v. *Mitchell.*

2. Under this act, if the plaintiff sues in debt for the penalty of $500, which it gives for illegally harboring and concealing, he may recover it upon proof of such harboring or concealment, irrespectively of any proof of actual damage to himself. But if he brings 'case on account of injuries,' for which the act saves a right of action, he can recover only to the amount of actual damage, which he shows he has suffered. — *Oliver* v. *Weakley.*

Habeas Corpus. — 1. On a habeas corpus, in a question of conflict between State and Federal process, counsel have no right to appear in defence of the State process, unless in some way authorized by the State or its proper officers; and after return made, the Court refused to hear as counsel a member of the bar, who showed no such authority, nor any authority beyond that of the person executing the State writ. — *Ex parte Jenkins.*

2. The Court may issue a habeas corpus to bring before it one of its deputy Marshals, arrested and put in gaol under State process — whether of a justice of the peace or of the Court, or the Supreme Court — whether criminal or civil — for his conduct in executing a writ issued under the Fugitive Slave Law; may inquire into the cause of commitment, and, if illegal, order a complete discharge. And in the case of an arrest, on State process, of an officer of the United States, for an alleged abuse of his powers, this Court will not only hear evidence to disprove the truth of the affidavits upon which the State authorities proceeded, but will, independently of such proof, consider those affidavits; and if, in the judgment of this Court, those affidavits do not contain a *primâ facie* ground for arrest, will discharge the federal officer, without hearing any counter-evidence. As a general thing, moreover, in the case of such an officer the Court will discharge him unless there be a positive oath of merits from the plaintiff, or a sworn detail of circumstances from others, to supply its place. — *Ib.*

3. If an officer of the United States has been arrested to answer an indictment found by a State Court, for riot, assault and battery, and assault with attempt to kill, the indictment not showing that the alleged offences were committed while the officer was professing to act under a law of the United States, or under some order, process, or decree of some judge or Court thereof, this Court, on a habeas corpus, where the petition of the officer denies the offence, and avers that what is alleged as offence was

done in proper execution of an order, process, or decree of a federal court, will go outside the indictment, and hear evidence to show the truth of the facts set forth by the officer. — *Ib.*

Injunction. See *Equity.*

Insurance. — 1. Seaworthiness is not a condition implied in regard to time policies, except under particular circumstances, if it is at all. — *Jones* v. *The Insurance Co.*

2. The Court supposing a case not before it, says, It *may* indeed be true, that in a time policy there is a warranty of seaworthiness at the commencement of the risk, so far as it lay in the power of the assured to effect it. But in such case the plea must state such facts as show either that at the time the insurance commenced the ship was in her original port of departure, and commenced her voyage in an unseaworthy condition, and so continued till the time of her loss; or, that having come into a distant port in a damaged condition before or after the commencement of the risk, where she might or ought to have been repaired, the owner or his agents neglected to repair her, and that she was lost in consequence. *Ib.* See *Collision.*

Jurisdiction. — 1. In suing on a chose in action, if the plaintiff be not a citizen of the same State as the defendant, his right to sue is not taken away by the fact that the chose may have passed to him through the hands of persons who were citizens of that State, and so unable to prosecute a suit in this Court, provided the party to whom the chose was originally given was not such a citizen, and could himself have therefore prosecuted such a suit — *Milledollar* v. *Bell.*

See *Habeas Corpus.*

Lien. — The lien for wages of a seaman, who is himself a part-owner of a vessel on which he serves, is discharged by a sheriff's sale of her, on execution against her owners. And this, although as a general principle, a sheriff's sale of a vessel does not discharge the sailor's lien upon her. — *Gallatin & Wood* v. *The Pilot.*

See *Release of Lien.*

Patent. — 1. It is not necessary for the protection of a patent, that the patentee should be the first person who conceived the practicability or existence of the thing patented, but who, though making important experiments, was unable to bring them to any successful or valuable result. He who reduces speculation to practice; whose experiments result in discovery, and who then afterwards first puts the public into practical and useful possession of the compound, art, machine or product, is entitled to the patent right. — *Goodyear* v. *Day.*

2. Patents are benignly construed in favor of inventors; and in considering the validity of a patent, objected to for want of a proper "description of the invention or discovery" having been filed previously to its issue, this description, even if quite wide of truth when taken literally, may be aided and made good by the description of "the manner and process of making, constructing, using and compounding the same." Thus, where the "description of the invention or discovery" described a *process*, and did not describe a *product*, but the description of "the manner and process" showed that the purpose and merit of the process was the production of a valuable '*fabric*,' it was held, in a suit for infringing the patent, by improperly using the product, to be no objection that the "description of the discovery or invention" described not it, but a *process*; the "description of the manner and process" showing that the purpose and merit of the process was the production of a '*fabric*.' — *Goodyear* v. *The Railroad.*

3. When a full and candid description of the manner and process of making and compounding any invention or discovery, describes such manner in

a concrete and illustrative, rather than in an abstracted and essential way, the description will cover every kind of application which was meant to come within, and which men of science can see is really involved in the principle attempted to be described. And so conversely, where an abstract description or abstract term is used, or an agent is described generally, rather than in its forms, the application of the thing, and not the form of the thing being patented, — this is enough. The last point is the one adjudged. The other being asserted. — *Ib.*

4. A description by an applicant for a patent of a machine, in which he sets forth his invention to be *for a combination of machinery*, not giving notice that he claims any *part* as new, is a dedication of that *part* to the public. — *Batten* v. *Taggert.*

5. After such part has passed into public use, the dedication cannot be revoked by surrender and re-issue of the patent, nor otherwise; neither the 13th section of the act of 1836, nor the 7th section of the act of 1837, relating to amending of patents, authorizing a new patent for an invention different from that originally patented. — *Ib.* See *Equity.*

Payment. See *Equity.*

Pleading. See *Equity.*

Practice. — 1. Although there is an act of Congress which allows subpœnas *ad testificandum* to run from the Circuit Courts into districts not their own, yet where the witness who has been thus subpœnaed, shows no disposition to treat the process of the Court with contempt, the issuing of an attachment is always matter of discretion with the Court. And where it would be oppressive, or dangerous to the health of the witness, or where any strong reason of business or family exists against his compulsory absence from home, the court will not compel his attendance, but will either postpone the cause, or have his deposition taken. — *Ex parte Bebees.*

See *Habeas Corpus — Jurisdiction.*

Registry of Ship. See *Evidence.*

Release of Lien. — Under the Pennsylvania statute of June 13, 1836, giving to mechanics a lien for work done to vessels, the lien is not necessarily discharged by the party's taking a note, and giving a *receipt in full.* Such receipt may be explained by showing negatively, that there was no contract or contemplation to discharge the lien; and by showing positively, by even slight facts, a different purpose which induced the transaction. — *Sutton* v. *The Albatross.*

Salvage. — The officers and crew of a foreign vessel of war are entitled to salvage in causes, civil and maritime, as other vessels are. Application of the principle of salvage to particular facts, and amount of salvage fixed in them. — *Robson* v. *The Huntress.*

Shipping. See *Agency.*

Statutes. See *Fugitive Slave Law.*

Subpœna. See *Practice.*

Terms of Law. — Their meaning when settled, cannot be shown by extrinsic evidence, not to have been rightly understood, or rightly used, nor to give to them an effect which a testator employing them is said to have intended; that effect being contrary to the one given by their legal meaning. — *Aspden's Estate.*

Treason. — 1. To constitute the offence of treason against the United States, there must be a conspiracy to resist generally and publicly by force — and an actual resistance by force or by intimidation of numbers — a law of the United States. — *United States* v. *Hanway.*

2. A conspiracy to resist by force the execution of such law in particular instances only; — a conspiracy for a personal or private, as distinguished from a public and national purpose, is not treason: however great the violence, or force or numbers of the conspirators may be. — *Ib.*

3. The general law of treason stated in a charge to the grand jury. See *Evidence.*

Witness. See *Practice — Evidence.*

SELECTIONS FROM THE FIRST PART OF 1 GRAY (MASS. REP.)[1]

IN PRESS.

Abandonment. — Evidence. — Insurance. When a vessel arrives at the port of destination damaged by perils insured against, to an amount less than half her valuation in the policy — deducting from the requisite repairs one third new for old, and is sold by the master in the presence of the owners, because of the impossibility of obtaining the funds necessary to repair her, the owners are not entitled to abandon her to the underwriters and recover as for a total loss.

In an action on a policy of insurance on a vessel which has been sold at her port of destination by the master, solely because of his inability to obtain funds to repair the damage occasioned to the vessel by the perils insured against; evidence that it would have been dangerous and impracticable to repair the vessel at that port is immaterial and therefore inadmissible.

It seems, that an abandonment of a vessel to the underwriters without discharging the lien thereon, created by a bottomry bond, is invalid if the owners had an opportunity to discharge such lien. — *Edward C. Allen* v. *Com. Ins. Co. of Nantucket. Philip H. Folger* v. *Same.*

Action for goods feloniously taken — Money had and received — Burden of Proof — Evidence — Practice — Jury. The doctrine of the English law, that for goods feloniously taken no action lies against the felon, before the institution of criminal proceedings against him, is not in force in this Commonwealth.

Under a count for money had and received, money fraudulently taken from the plaintiff by the defendant may be recovered, though not designated as such in the plaintiff's specification of claim, if no objection be made on that ground by the defendant, until after all the evidence in the case has been introduced.

On the trial of an action, brought by a principal against his agent to recover money received by the defendant from sales of the plaintiff's property, an instruction to the jury that, if they are satisfied that the defendant sold the plaintiff's property and received the money therefor, he is bound to account for the same, is not open to the objection that, on proof of the sale and of the receipt of the money, it throws the burden of proof upon the defendant to show that the property sold was not the property of the plaintiff.

On the trial of an action brought by a principal against an agent, who had charge of certain business of the principal for many years, to recover money received by the defendant from clandestine sales of property of the plaintiff, and money of the plaintiff fraudulently taken by the defendant, evidence that the defendant, at the time of entering the plaintiff's service, was insolvent, and that he had since received only a limited salary and some small additional compensation, and that subsequent to the time of his alleged misdoings, and during the period specified in the writ, he was the owner of a large property, far exceeding the aggregate of all his salary and receipts while in the plaintiff's service, is admissible, as having some tendency to prove, if the jury are satisfied by other evidence that money had been taken from the plaintiff by some one in his employ, that the de-

[1] The greater part of the cases in this part of Mr. Gray's first volume have already appeared in our pages, more or less at length. We are not aware that we have now omitted any of the remainder.

fendant is the guilty party. And the declarations of the defendant, concerning his property and business transactions, made to third persons, in the absence of the plaintiff or his agents, are inadmissible to rebut such evidence.

On the trial of an action, brought by a corporation against one of their agents, to recover money fraudulently taken from them by the defendant, when the successor of the defendant in the same office has been called as a witness, and is sought to be impeached on the ground that he committed the acts with which the defendant is charged, evidence that money had been taken from the office while the defendant was employed there, prior to the time embraced in the plaintiff's specification of claim, is admissible for the purpose of sustaining the credit of the witness.

When books and documents introduced in evidence at a trial are multifarious and voluminous, and of such a character as to render it difficult for the jury to comprehend material facts, without schedules containing abstracts thereof, it is within the discretion of the presiding judge to admit such schedules, verified by the testimony of the person by whom they were prepared, allowing the adverse party an opportunity to examine them before the case is committed to the jury.

Declarations, relating to the subject matter of a suit, made by a third person, in the presence of a party to the suit, and to which such party had an opportunity to reply, but did not, are admissible in evidence against him. And such evidence cannot be controlled by proof of different declarations subsequently made by the same person (who died before the trial) to others.

An agent of a corporation, who, on the trial of an action brought against him by the corporation to recover money of the corporation alleged to have been fraudulently taken by him, has expressly admitted the general carefulness and accuracy of the plaintiff's cashier, called as a witness by them, cannot take exceptions to the refusal of the presiding judge to allow him, at a subsequent stage of the trial, to prove an inaccuracy of said cashier in regard to a particular entry, in no way bearing upon the case, except as affecting the cashier's general carefulness and accuracy.

Affidavits of jurors cannot be received to prove misconduct in the jury room. — *Boston and Worcester Railroad Corporation* v. *Amos W. Dana.*

Common Carrier — Negligence. A consignee of goods arriving by railroad, sent to the depot of the railroad corporation a teamster, who knew the place to which the goods were to go, but did not know the marks of the bales. The teamster demanded the goods of the freight agent of the corporation, who, after a superficial examination, said that the goods had already been delivered, and were not there. The teamster pointed out some bales, and asked if those were not the goods, as in fact they were. The freight agent turned over one of the bales so as to exhibit the marks, and said those were not the goods, but came from another place. And the teamster went away without the goods. *Held*, that the agent of the railroad corporation was guilty of negligence in not delivering the goods; and the goods being destroyed by accidental fire during the following night, that the corporation were responsible for their value.—*Nathaniel Stevens* v. *Boston and Maine Railroad.*

Contract — Action — Patent. B. covenanted under seal as follows: "To pay A. the sum of five hundred dollars for the grant of a patent right for building and using a floating dry dock. And for every and each such floating dry dock as may be built or used by B. the sum of $500 shall be paid as aforesaid to A., which sum or sums shall be invested in the capital stocks of the aforesaid docks. B. to pay A. the profits arising from the

use of all such dry docks, proportionally on all such shares as may be held by A., quarter yearly." B. built a floating dry dock, at a cost of four thousand five hundred dollars, and paid A. one ninth part of the profits of its use for some time, and then refused to continue to make such payments because the patent was void; but continued in the undisturbed en oyment of the patent until after its expiration; and by holding it up as valid, prevented others from interfering with his sole use thereof. *Held*, that A. was the owner of one-ninth part of the dock built by B. and entitled to his share of the profits of its use, even after the expiration of the patent; and that the invalidity of the patent was no defence to an action brought by him against B. for the unpaid balance of such share. — *Bradbury C. Bartlett* v. *Samuel F. Holbrook.*

Devise. — In this commonwealth, as by the common law, a devise to A. and the heirs of his body and to their assigns forever, gives an estate tail to A. which descends to his oldest son, and to the oldest son of such oldest son. — *Raddai Wight and Wife* v. *Rufus Thayer.*

Evidence — Contract. H. agreed in writing "to slate the other building, about to be built at South Boston, for the new iron works, by G. and others, on the same terms he did the first building:" The written contract, specifying the work to be done on the first building, and the prices to be paid therefor, was between H. and the B. I. Co. of which G. was treasurer. Before H. thus agreed to slate "the other building," G., who owned the new iron works at South Boston, had sold them to the M. I. Co., in which he was a stockholder, pursuant to an agreement to that effect made with the other stockholders before that corporation was organized. *Held*, in an action brought by H. against the B. I. Co. to recover for slating the second building, that extrinsic evidence was admissible to show who were designated by the words "G. and others" in the written agreement, and for whom and on whose account such slating was to be done.—*Roger Herring* v. *Boston Iron Company.*

False Imprisonment. — A sheriff, by order of the court, took a convict, sentenced to two months imprisonment, into his custody, in order to execute the sentence; the court on the same day, for the purpose of allowing the convict to be called as a witness without sending to his place of confinement, rescinded the order, and directed the sheriff not to detain him; and on the next day ordered the sheriff to execute the original sentence, which was accordingly done. *Held*, that the sheriff was not liable for false imprisonment of the convict, unless he detained him in his custody after the court directed him not to detain him, and before the convict was again ordered into his custody.—*Thomas Coffin* v. *Uriah Gardner.*

Husband and Wife — Marriage — Age of Consent. The age of consent in this Commonwealth, as by the common law, is twelve in females and fourteen in males; and a marriage between two infants above those ages is valid, without the consent of their parents or guardians, notwithstanding the Rev. Sts. c. 75, §§ 15, 19, which prohibit magistrates or ministers, under a penalty, from solemnizing the marriage of a female under the age of eighteen, or a male under the age of twenty-one, without the consent of the parent or guardian.—*Thomas J. Parton* v. *Susan Hervey.*

Insolvent Debtors — Trover. The assignees of an insolvent debtor brought a bill in equity to set aside conveyances of property made by the debtor to the defendants, as made and taken either without consideration and in fraud of creditors, or by way of unlawful preference, contrary to the insolvent laws, charging the defendants, in the common form, with combining and confederating with divers other persons to the plaintiffs unknown, and praying for relief against the defendants jointly and severally; and the court, after a hearing upon the merits, decreed that the demands, set up by the defendants in their several answers, were justly due them from the insolvent, and that the conveyances of property in payment there-

of were not made in violation of the insolvent laws, and dismissed the bill. *Held*, that this decree was a bar to an action of trover by the assignees for the same property against one of the defendants in the suit in equity.

Joint Defendants — Damages. Where all the defendants, in an action, charging them with a joint trespass, are defaulted, and the case referred to an assessor to assess the damages, they are all liable for the whole damage actually sustained by the plaintiff, although it appear by the evidence before the assessor that one of them did not participate in the trespass.

In trespass for taking and carrying away sheep, the measure of damages is the market value of the sheep, and not their value to the plaintiff. — *Edward W. Gardner* v. *Thomas B. Field.*

Landlord and Tenant — Pleading — Estoppel. The assignee of all a lessee's "interest in and to the lease" may recover rent, subsequently accruing, of one to whom such lessee has previously leased a portion of the demised premises for the whole term, and who occupies such portion accordingly, in an action of contract, without setting forth in his declaration the assignment from the original lessee to the defendant. And the defendant in such action is estopped to deny the estate of the original lessor in the premises. — *George F. Patten* v. *Daniel Deshon.*

Landlord and Tenant — Apportionment of Rent — Estoppel. The assignee of a lease who enters upon and occupies the premises is estopped in an action for rent brought against him by the original lessor, to deny the validity of the assignment from the original lessee to him, and is liable for the rent during the whole term, although he leaves the premises before the expiration thereof.

On a trial of an action brought by a lessor against his lessee for a quarter's rent, there was evidence that the lessee, before the expiration of the quarter, left the premises, and authorized the plaintiff to enter, and fit them for a new tenant; the judge instructed the jury that, in case they found a contract to apportion the rent, they might apportion it accordingly; and the jury returned a verdict for the plaintiff for a portion of the quarter's rent. *Held*, that the defendant had no ground of exception to this instruction. — *Edward Blake* v. *Albert Sanderson.*

Limitations, Statute of. — Under Rev. Sts. c. 120, § 4, as well as under St. 1786, c. 52, § 5, the purchaser of a witnessed promissory note may maintain an action thereon, for his own use, in the name of the original payee, after the expiration of six years from the time when the cause of action accrues. — *Aaron W. Rockwood* v. *Joseph B. Brown.*

Mortgage of personal Property — Action — Demand. A demand of payment of the money due him made by the mortgagee of goods, upon an officer attaching them together with other goods of the mortgagor, need not specify which of the goods are included in the mortgage.

A mortgagee of goods, attached together with other goods of the mortgagor, with which they are intermingled, on demanding payment of the attaching officer, as required by Rev. Sts. c. 90, § 79, may maintain an action against him, without pointing out the articles included in his mortgage.

A demand of payment, made by a mortgagee of goods attached, on the attaching officer, is not rendered invalid by including in it articles not covered by the mortgage. — *Charles S. Averill* v. *Francis O. Irish.*

Practice — Evidence — Witness — Insanity. On the trial of a criminal case, when the defence relied on is the insanity of the defendant, neither books of established reputation on the subject of insanity, whether written by medical men or lawyers, nor statistics of the causes of insanity, as stated by the court or counsel on the trial of another case, can be read to the jury.

A witness, not an expert, who has testified to the appearance and con-

versation at certain interviews, of a person whose insanity is sought to be established, cannot be asked what opinion he formed at the time of those interviews, of that person's mental condition.

On the trial of an indictment for murder, where the defence relied on is, that the homicide was committed by the defendant under an insane delusion that the deceased and others were engaged in a conspiracy against him, expressions of hostile feelings towards the defendant, made by the deceased, though not shown to have been made in the defendant's presence, nor to have come to his knowledge are admissible evidence to show the state of mind of the deceased towards the defendant at that time, and as thus tending to show some real ground for the defendant's feelings toward the deceased.

A witness who has been asked on a cross-examination, when he was first inquired of by any one concerning the facts to which he has testified in chief, may be asked on re-examination whether he had previously communicated the same facts to other persons. — *Commonwealth* v. *Wilson*.

Railroad — Location of Road — Quo warranto — Charter. By Rev. Sts. c. 39, § 73, a railroad corporation, who file the location of their road with the county commissioners within one year, as required by § 75, may after the expiration of that year, within the time prescribed by law for completing their road, vary the location of any portion of their road to any extent, provided they do not locate any part thereof without the limits prescribed by their act of incorporation; although their act of incorporation, which provides that they shall have the powers and duties set forth in Rev. Sts. c. 39, also provides that it shall be void, if their location be not filed within one year. And their power so to vary their location is not controlled or limited by the original location, as filed with the county commissioners.

A plan exhibited to the legislature by those applying for an act of incorporation as a railroad company, but not referred to in the act, is not admissible in evidence to control the construction of the provisions of the act of incorporation, as to the limits within which the road is to be located.

By St. 1850, c. 268, the Midland Railroad Company were authorized to locate and construct a railroad, "commencing at some convenient point on the Norfolk County Railroad; thence through the southerly part of Dedham; thence through or near the westerly part of the towns of Canton and Milton."

Held, that a location, commencing at a point of the Norfolk County Railroad in South Dedham, and not departing from that road at once, but running northerly upon it for more than two miles, and then approaching within two hundred rods of the northwesterly corner of Canton, and running near the westerly boundary of Milton, was authorized by the statute.

A corporation, who have been authorized to construct a railroad, and are afterwards authorized to make it in sections of five miles each, provided that they shall not commence the construction of any portion of their road within a certain distance of one of its terminations, until all the stock is subscribed for by responsible persons, and a certain portion thereof actually paid in, are not obliged to have their stock subscribed for, and the specified amount paid in, as a condition precedent to constructing their whole road, not in sections.

Whether the private right or interest, injured or put in hazard, by the exercise by any private corporation, of a franchise or privilege not conferred by law, must be a right or interest, for an injury to which some remedy previously existed in law or equity, in order to authorize an application to this court for leave to file an information in the nature of a *quo warranto* — *quære.* — *Boston and Providence Railroad Corporation* v. *Midland Railroad Company.*

Sale — Contract — Partnership. A. made with B. the following

agreement in writing: "Sold B. on joint account with A. two thousand boxes of candles, at twenty-six cents, six months from delivery; B. to be allowed two and a half per cent. on sales; on all sales not approved by A., B is to guaranty the same, receiving a commission of two and a half per cent.; for one half of the sales made by B. he is to pass over the paper to A; there are to be no charges for storage; property in store to be covered by insurance by B. for joint account and expense." A. delivered the candles to B. under this agreement, and received from time to time, as the candles were delivered, therefor, eight notes of B. payable in six months, two of which were paid by B. at maturity, and the others indorsed and negotiated by A. and afterwards paid by him, B. having become insolvent. *Held*, that these facts showed a sale of an undivided half of the candles by A. to B., and not a partnership between A. and B. with regard to the candles; and that A. therefore had no lien on B.'s half of the candles, as against B.'s assignees in insolvency. — *W. T. Hawes* v. *Pardon Tillinghast.*

Trustee — Deed. This court has power, under its general equity jurisdiction to enforce and regulate the execution of trusts, to allow a trustee to resign upon his own application, notwithstanding the Rev. Sts. c. 69, and St. 1843, c. 19, conferring similar powers in certain cases upon the judge of probate.

An unmarried woman conveyed her real and personal estate to E. in trust to pay over the income thereof to her during her life, and on her decease to convey the property as she should appoint; and reserved the power, except while she should be a married woman, to revoke all the trusts created by this settlement, and dispose of the property at her pleasure: And the settlement provided that the said trustee might resign at pleasure, and that the settler might nominate a new trustee, and that "said E." should transfer all the trust property to such new trustee, who should "thenceforth have and exercise all the rights and powers, and be subject to all the duties, hereby vested in or imposed upon said E." *Held*, that the power of appointment, reserved to the settler, was not exhausted by one appointment of a trustee on E's. resignation; but that on the resignation of such new trustee, she might make another appointment, and that, if such appointee was a fit person, the court would order the trust property to be conveyed to him. — *Jonathan I. Bowditch* v. *Mary A. Banuelos.*

Way — Adverse Possession. The record of the laying out of the streets in South Boston, made by the selectmen of Boston, pursuant to the directions of St. 1803, c. 111, is thus: "The selectmen have determined and agreed to lay out the streets through the whole of said tract, now called South Boston, according to a plan drawn by M. W., surveyor;" "the streets agreed upon and laid out are described as follows:" among the streets so described were three "to the northward of Broadway, and parallel thereto, all of them fifty feet wide," "the street on the northern shore in Boston harbor to be called First Street," and to be two hundred and fifty feet distant from the second. First Street was laid out according to this description from the easterly part of South Boston as far westwardly as the width of the land between Broadway and the northern shore would allow. *Held*, that a section of a street drawn on the plan of M. W. along the northern shore, though only forty feet wide, and only one hundred and eighty feet distant from the second street, and though neither it, nor the corresponding part of the second street, was parallel to Broadway, followed the description in the Record sufficiently to authorize the mayor and aldermen of Boston to complete it.

The possession and fencing, for more than twenty years, by one holding no conveyance thereof, of land in South Boston, over which a street was

laid out by the selectmen under St. 1803, c. 111, but which has not been ordered to be completed, is not such an adverse possession as to affect the right of the mayor and aldermen of Boston to complete the street.

A highway may be located, without special authority of the legislature, over flats, lying between high and low water mark, which have been lawfully filled up by the proprietor of the adjoining upland. — *David Henshaw* v. *Thomas Hunting*.

Miscellaneous Intelligence.

WHAT IS A CRIME? — We directed the attention of our readers last week to a question of great interest and importance which had been raised, but not decided in the Court of Exchequer. It arose on the Evidence Act, which renders parties admissible as witnesses, but by the 3d clause excepts "any person who in any criminal proceeding is charged with the commission of any indictable offence, or any offence punishable on summary conviction." The present case, the *Attorney-General* v. *Radloff*, 23 L. T. Rep. 191, was an information for recovery of penalties for smuggling tobacco; and the question was, whether the defendant was a competent witness for or against himself. Was it a criminal proceeding in which he was charged with an indictable offence? Or was it a criminal proceeding it which he was charged with an offence punishable by summary conviction? Of the former there could be no doubt, for it was not an indictable offence; the only point remaining, therefore, was, whether the statute was to be so read, as meaning a criminal proceeding wherein the defendant was charged with an offence punishable by summary conviction? It was agreed that this was the right reading of the statute; and then came the material point, is an excise information a criminal proceeding? It will be seen that upon this question the Judges were equally divided, and the arguments by which they supported their diverse views will be found at length in the report. MARTIN, B. thought the proper meaning of crime in law was "an indictable offence," and he therefore was of opinion that the case did not come within the exception. PARKE, B. held the contrary; acceding, however, to the proposition that the statute was to be read as applying only to summary convictions in criminal proceedings. But he said "an information by the Attorney-General for an offence against the revenue laws *is* a criminal proceeding. It is a proceeding instituted by the Crown for the punishment of a crime against the public; for it is a crime and injury to the public to disobey the statute and revenue laws. I think a prosecution or proceeding for any offence against the public is a criminal prosecution." But surely this definition of a crime, pushed to its consequences, would entirely destroy all recognized boundaries between civil and criminal law. POLLOCK, C. B. concurred with him. "I cannot distinguish," he said, "in point of either morals or law, between the cheating the State and the cheating a private individual. I cannot distinguish between endeavoring by concealment and fraud to prevent that from being paid which is necessary for the public service, and by a similar fraud and concealment depriving one of her Majesty's subjects of that which is his lawful right and due." In morals, certainly there is no difference; but the law has, for wise purposes, chosen to distinguish between the withholding of a debt and the obtaining of money by a false pretence. It has thought fit to make it a crime to cheat your neighbor by a lie, but not a crime to cheat your creditors; and so marked is this distinction, that this very week we have seen the House of Commons

solemnly affirming a proposition to make it lawful for men to cheat their creditors. So with the revenue — the law has chosen to treat it as *a debt* due to the Crown, the non-payment of which it punishes with a penalty. In construing a statute, the words must be read in their legal sense, and "criminal proceeding" should be construed as a proceeding for something which is "a crime" in law; and the test of "a crime" in law we take to be, if it is an indictable offence, either at common law, or made such by statute. PLATT, B., who sided with Martin, B., thus viewed the question: "What is the meaning of a civil action as contradistinguished from a criminal proceeding? It strikes me that the true test is this. If the subject-matter be of a personal character, that is to say, either of goods or property to be recovered by means of the proceeding, that then becomes a civil proceeding; but if the proceeding is one which may affect the defendant personally at once, by the imprisonment of his body, in the event of a verdict of guilty being pronounced against him, without more, he is liable as a public offender. That is what I consider to be a 'criminal proceeding.'" This is an ingenious definition, but not strictly accurate, for it constitutes as the test of crime the legal consequence; and its imperfection is shown by this, that there are many summary convictions for offences clearly criminal in their nature that are no punishable by imprisonment "on a verdict of guilty, without more;" and, on the other hand, there are some offences not criminal which are punishable by imprisonment.

Thus stands this very curious and interesting question. Perhaps it will astonish some of our readers to find that on a point apparently so simple and elementary as "What is a crime?" which stands, as it were, at the very threshold of the law, four learned Judges should be equally divided in opinion. It proves the correctness of an assertion we have often ventured in these columns, that sufficient attention is not given, either by the makers or the administrators of our law, to the province of jurisprudence: by which we mean the proper boundaries of law — what are the rightful subjects of legislation, and what are not — and what acts or neglects belong properly to civil, and what to criminal law. Certainly, before we attempt criminal codification or legislation, we ought to come to some clear understanding of the question "What is a crime?" on which at present, there is a manifest conflict among the most skilful lawyers.

One view of the particular question that has occasioned this curious and interesting discussion does not appear to have presented itself to either of the Judges. Knowingly to disobey a statute, with intent to break or evade the law, is in itself an indictable offence, and therefore "a crime." Might it not be said that a proceeding to punish that offence by information for a penalty is a charge for an indictable offence, punishable on summary conviction, and therefore a criminal proceeding? At all events, so serious a doubt should be removed by the Legislature; and the difficulty might be removed by half-a-dozen words in the Common Law Procedure Bill. — *Law Times.*

See May Law Rep., 1854. Notes to Leading Criminal Cases, *Rex* v. *Wheatly.*

WITCHCRAFT AND SORCERY AMONG THE PUEBLO INDIANS. — Santa Fe papers of April 29th have an interesting account of a trial before the U. States District Court for the Territory of New Mexico, in which four Pueblo Indians were charged with having murdered two others, accused of witchcraft and sorcery. The *Gazette* says:

"The case presents the most singular state of facts that could be imagined, and will be considered by our readers in the United States as something both new and strange. The offence for which the two deceased, Romero and Tafallo, were put to death, was that of witchcraft and

sorcery. They were shot by the defendant named in the indictment, with a gun, a short distance beyond the borders of the Pueblo. Who would have imagined that the scenes of the early days of Salem would be re-enacted in the middle of the nineteenth century, and that, too, among a class of people hardly one step more civilized than the savage.

That our readers may further understand this singular case, we will say a word or two in regard to the Pueblo Indians.

They are a class of people who are supposed to have been originally wild and savage, like the other tribes of the territory, but were converted to Catholicism, in the early days of the Spaniards, when they first occupied this country. They were then gathered into small villages, and so have always remained, up to the present time, scattered throughout the length and breadth of the country. For all local purposes they have been recognized as distinct communities, and are a quiet and harmless race of people. They elect their own officers, but are not taxed, nor enjoy any of the rights nor bear any of the burdens of citizens. They retain their primitive dress of skins, and in general appearance differ but little from the wild Indians of the plains and mountains.

Such, in brief, are this singular people, who put four of their number to death for the supposed crime of witchcraft. They profess the Catholic religion, but are wretchedly ignorant and superstitious. Many have supposed them wholly independent of the laws of the United States and this territory, but this point, when made by the defence on the trial, was not listened to by the court, which decided that all persons within the limits of the territory were alike subject to the criminal laws of the country. This is an important point settled, as regards the Pueblo Indians, and henceforward they will be sensible of the fact that they cannot commit crimes without being liable to punishment.

The Nambe Indians were as much frightened as though they had been found guilty, and the trial will serve the same purpose as though they had been punished with death or imprisonment; and we venture to say that in future, no more witches will be killed in Nambe. Although the act of the killing was sufficiently proved to the jury, there was no evidence that it was done in the county of Santa Fe, without which they could not find them guilty. The trial was conducted in three languages — English, Spanish, and the dialect of Nambe — and during its continuance a deep interest was manifested."

Anecdote of Lord Tenterden. — In a speech at Sherborne, Mr. Macready related the following anecdote: — "The first time I visited Canterbury I wished of course to see the Cathedral. A gentleman there of the name of Austin, the surveyor and architect of the building, hearing of my intention, and being desirous of showing me civility, proposed to accompany me. This person had re-decorated almost the whole of the interior, had restored the dilapidated portion of the western front, had built himself an excellent house in the cathedral grounds, and was at the time I speak of, in the enjoyment of a very comfortable income, and a most respectable position. He was the artificer of his own fortune, and had raised himself to this position from a state almost of actual destitution; he had formerly been the servant of a friend of mine, and when he reached Canterbury had not half-a-crown in his pocket. He directed my attention to everything worthy of notice; pointed out with the detective eye of taste the more recondite excellences of art throughout the building, and with convincing accuracy, shed light on historical traditions associated with it. It was opposite the western front that he stood with me before what seemed the site of a small shed or stall, then unoccupied, and said, 'Upon this spot a little barber's shop used to stand. The last time Lord Tenterden came down here, he brought his son with him, and it was my duty, of course, to at-

tend them over the Cathedral. When we came to this side of it, he led his son up to this very spot, and said to him, 'Charles, you see this little shop; I have brought you here on purpose to show it to you. In that shop your grandfather used to shave for a penny! That is the proudest reflection of my life! While you live never forget that, my dear Charles!'" And this man, the son of a poor barber, was the Lord Chief Justice of England.— *Law Times.*

M. BERRYER.— What M. Berryer had to say to young lawyers in Paris, may interest those of America. The Gazette des Tribunaux gives the following report of the principal passages of an address by him as "batonnier" before the "Conference des Avocats"—

"Gentlemen," said he, "I will not pronounce the final adjournment of this year's debates, without expressing to you the happiness I have enjoyed in my intercourse with you. Now approaching the end of my career; having been called by the suffrages of my aged brethren to perform the functions of senior advocate, I can say with truth that I have seen with great satisfaction, what the bar may expect from the young generation over whose labors I have presided.

Of all professions, that of the advocate is the most elevated and dignified. Do not suffer yourself to be discouraged by the difficulties which present themselves to you on your entrance into it. Persevere, and you will succeed. I desire to forewarn and forearm you against an unfortunate tendency of our times. We know not how to await what the future may bring; we desert the liberal professions, in which the first steps are difficult and disagreeable, and seek an office or employment which may secure a fixed and certain remuneration. We sacrifice the future to the present.

Retreat not before the difficulties of our profession. Elevated and noble, indeed, it is. If it should adorn itself with this youthful band which I see before me, it would advance still higher in honor and dignity.

It is not a slight advantage to belong to a profession which confers no rank; which recognizes no profession superior to itself; and which looks down on none as inferior, for it stretches forth its hand to all the unfortunate and wretched.

Permit me to counsel you in regard to the exercise of this profession. Apply yourselves constantly to the study of every cause which shall be confided to your management, with the same industry and earnestness that you have devoted to the study of the questions which you have discussed here. When an advocate has thoroughly and deeply examined a cause that he has been employed in, and has undertaken to plead, he acquires easily an appropriate style, and avoids that vulgarity of speech which derogates from the dignity of the advocate and of the audience.

Avoid a tendency, or a habit, which did not exist when I entered the bar, but has grown on the profession during the last fifteen years.

Now, in almost all cases, an advocate pleads summarily, as if he were merely reporting a case. You ought, even in the clearest and most simple causes, to maintain the dignity of the gown; and you will thus gain for yourself and the profession, the respect of the magistrate and of the public. You ought not to present to the Tribunals disconnected and immethodical statements; that is not arguing a case. The smallest matter, that becomes the subject of contest in courts, requires to be studied and treated methodically and with care.

These are the counsels of one who has long been a member of the profession; of an aged advocate, who never desired to quit it to enter any other career, and who, in spite of the attractions of the tribune, which I regret a little, I confess, has always preferred to continue an advocate.

I know not whether it will be allowed to me to continue much longer in the exercise of the profession; but I shall forever preserve the remembrance of the two years which I have passed among you; and I shall always receive with delight the visits of my young associates, over whose labors I have presided, whose estimable qualities I have appreciated, and each of whom, I trust, will contribute his share of glory to the bar."

A French Judgment in an Action for Libel. — During the years 1852 and 1853, M. Philarete Chasles published in a Russian journal, the Gazette of St. Petersburg, a series of letters, in which M. Buloz, chief editor of the *Revue des Deux Mondes*, and M. de Mars, director of that review, discovered attacks on the works which they conducted, of such a nature as to do them material injury. They therefore summoned M. Philarete Chasles before the 4th chamber of the civil tribunal of the Seine, laying their damages at 20,000 francs. The tribunal rendered the following judgment: —

Whereas Buloz and de Mars demand against Philarete Chasles, reparation for the damage which they declare they have suffered by the publication, at St. Petersburg, of thirty-four letters, composed by Philarete Chasles, and translated from the French into the Russian language, in which several passages are found wherein Buloz and the *Revue des Deux Mondes* are expressly mentioned, or referred to with sufficient certainty;

Whereas the plaintiffs do not expressly declare that they have been defamed, and it appears that the passages marked do not import defamation, as there is not perceived in them any allegation or imputation of any actual fact;

Whereas, if it is true that the passages marked by the plaintiffs contain severe expressions which the tribunal might regret to find in a publication made at a distance from, and without the knowledge of, the persons attacked, nevertheless it does not appear that they have caused any damage to either of the plaintiffs;

Whereas, a small number only of passages are marked, in a publication of considerable extent, and it is only by placing them side by side, and explaining some of them by others, that the conclusion can be arrived at that a passage in which Buloz is named, discloses that he was meant in a passage published a long time before, in which he was not named; and clearly and from the admission of Buloz, many of the passages marked by himself do not refer to him;

Whereas the liberty which, at all times, has been granted to satirical writers, excuses to a certain extent, what in a work of a character more serious, more positive, and in which the imagination plays no part, might be properly judged with more severity;

Whereas, besides, the publication was not made in France, and appeared only in a language but very little known there, so that for Russian readers, for whom it was exclusively designed, it had not, at least with any effect, the character of personality which it would have had for French readers; and if, under the circumstances, the reputation of Buloz may have received a slight injury, he may find in this judgment a just reparation, and the only one he has a right to demand;

Whereas, it has not been proved by de Mars, that the passages which he has marked, have injured the sale of his review in Russia;

Whereas, moreover, the publication is entirely discontinued;

Therefore, for these "*motifs*,"

We condemn Philarete Chasles to pay the costs of the plaintiff, to stand instead of damages. — *Gazette des Tribunaux.*

Violation of the Grave. — Two inhabitants of a little village of Sologne have been brought before the tribunal of Romorantin, for a crime

exceedingly rare in criminal annals, and which originated in the grossest superstition.

One was accused of the violation of the grave, and seated at his side was another, imbecile and sad in look, the grave digger of the commune of Mur, accused as an accomplice. The former had been pointed at, for some time, by public rumor, as having, in the night, exhumed the head of a man, who had been several years buried, and secretly carried into his house and there concealed these human remains.

The first rumor was sufficient to produce an extraordinary excitement among the people; but details were added which caused horror in some, and incredulity in others. It was said that the accused had been in earnest pursuit, for several weeks, of a human head; and to procure it had in vain solicited the grave digger of Romorantin, then that of a neighboring commune, but at length the grave digger of Mur, pointed out a grave where he obtained the head he so much desired. Rumor even added that he had subjected these remains to a sort of preparation, and having boiled them, had made his young child drink of the horrible decoction.

However strange were these details, they were, nevertheless, true, and true in every point, for the accused, who had not, nevertheless, the figure of a vampire, but rather that of a poor besotted peasant, related them himself to the audience.

He attributed this act, to which we can give no name, to the belief instilled into his mind by two beggars, that by giving to his son this abominable beverage, he would cure him of attacks of epilepsy, to which he had been subject for several years. He said that nothing but the force of paternal love could have determined him to surmount the fear he felt in going, in the darkness, into the cemetery, and digging six feet below the surface, for the head of a dead man, which he was obliged to break and tear from the trunk to which it still adhered. He added, that it was well for him that he did it, for since then the epileptic attacks had ceased.

The Tribunal, feeling sympathy for the paternal affection of the wretched man, and commiseration for his superstitious notions, sentenced him and his accomplice to only three days imprisonment. — *Ibid.*

Conflict of Laws. — Distribution of Personal Property. — By the laws of France, the property of a resident, leaving no direct heirs, but brothers and sisters only, is to be distributed among them; by the laws of Russia among the brothers only. Prince Galitzin, a Russian, but residing, though not domiciliated, in France, died in that country, leaving several sisters married and domiciliated there, and several brothers who continued to reside in Russia; and also personal property, consisting of money, clothes, furniture and certificates of foreign stock deposited with a Paris banker. The brothers claimed the whole; the sisters claimed an equal share with the brothers. The court decreed that the administrator should hold all the aforesaid property in France for the sisters, until it should be ascertained to what sum their shares in the whole estate amounted, according to the laws of France; and if the property in France should be found not to exceed in value their shares, he should pay or deliver to them the whole of it; if it did exceed, the excess should be paid over to the person or persons entitled to receive it in Russia. — *Ibid.*

Notice of New Book.

Supplement to the Revised Statutes. Being the General Laws of the Commonwealth of Massachusetts. Session, 1854. Prepared and Edited by Horace Gray, Jr. Boston. Dutton & Wentworth, publishers.

pp. 99. With an Appendix containing the Articles of Amendment to the Constitution of Massachusetts, agreed to by the Legislature of 1854.

This edition of the laws is almost a necessity for the practising lawyer in Massachusetts. We made the Statutes contained in the present number the subject of some gentle animadversion in a recent article, (See Law Reporter for June, 1854,) and we recommend the Legislature to refer bills in future to Messrs. Dutton & Wentworth before they are passed to be enacted.

Insolvents in Massachusetts.

Name of Insolvent.	Residence.	Commencement of Proceedings.	Name of Commissioner.
Averell, Reuben C.[1]	Roxbury,	Sept. 9, 1854.	Samuel B. Noyes.
Baldwin, Thomas C.	Newton,	July 17,	Charles Demond.
Ballou, Willard H.	Pelham,	Aug. 12,	I. F. Conkey.
Beal, John F.	Stoughton,	" 22,	Samuel B Noyes.
Beal, Randall B.	Abington,	" 12,	Welcome Young.
Butler, John R.	Boston,	" 14,	Charles Demond.
Carver, Lowell	Lowell,	" 22,	Isaac S. Morse.
Chamberlain, Andrew L.	Boston,	" 19,	John P. Putnam.
Clarke, James W.	Roxbury,	Sept. 8,	Samuel B. Noyes.
Crawford, John	Oakham,	Aug. 24,	Alexander H. Bullock.
Cushing, John	Chelsea,	" 18,	John P. Putnam.
Deshon, Daniel Jr.	Boston,	" 17,	John P. Putnam.
Dickerson, Royal D.	Florida,	" 29,	Lorenzo H Gamwell.
Dunlap, Delos A.	East Bridgewater,	" 9,	Welcome Young.
Emery, Alonzo	Boston,	" 23,	John P. Putnam.
Fairbanks, Daniel G.	Grafton,	" 31,	Alexander H. Bullock.
Fisher, John B.	Canton,	Sept. 6,	Samuel B. Noyes.
Flanders, Isaac E.	Charlestown,	June 14,	Josiah Rutter.
Frary, Thomas	Greenfield,	Aug. 12,	David Aiken.
Fricke, Charles	Boston,	May 17,	Charles Demond.
Gardiner, Stephen H.	Lynn,	Aug. 7,	John G. King.
Goddard, Samuel	Worcester,	" 22,	Alexander H. Bullock.
Goodhue, John	Salem,	" 29,	John G. King.
Hale, Nathan	Boston,	" 14,	John P. Putnam.
Henderson, Walter A.	Boston,	" 9,	John P. Putnam.
Huntley, Russell	Charlestown,	" 9,	Isaac S. Morse.
Johnson, Moses S.[2] Johnson, Pliny F.	Sutton,	" 30,	Alexander H. Bullock.
Jones, William	Randolph,	" 10,	Samuel B. Noyes.
Knapp, Anthony	Boston,	" 19,	John P. Putnam.
Lyon, Joseph	Boston,	" 8,	John P. Putnam.
Mattapan Iron Company,	Boston,	" 25,	John M. Williams.
Mayall, Miles	Roxbury,	" 23,	Samuel B. Noyes.
McCloskey, Francis	Millbury,	" 11,	Alexander H. Bullock.
McKenrea, Michael	Waltham,	July 15,	Josiah Rutter.
McKenzie, John	Waltham,	" 8,	Josiah Rutter.
Merrill, Lewis Jr.	Cambridge,	June 8,	Josiah Rutter.
Messer, Willard L.[1]	Roxbury,	Sept. 9,	Samuel B. Noyes.
Morse, Elbridge G.	Boston,	June 17,	Charles Demond.
Nichols, Daniel F.	Salem,	Aug. 23,	John G. King.
Nott, Samuel	Boston,	" 21,	John M. Williams.
Otis, Elijah	Scituate,	" 17,	Welcome Young.
Pinkham, James L.	Boston,	" 18,	John P. Putnam.
Prescott, Chase	Lowell,	" 10,	Isaac S. Morse.
Riley, Michael G.	Boston,	" 22,	Charles Demond.
Sloan, Robert M.	Cambridge,	July 1,	Josiah Rutter.
Smith, Geo. A. & Lyman G.	Boston,	Aug. 22,	Charles Demond.
Snow, James	West Brookfield,	" 18,	Alexander H. Bullock.
Snow, Levi E.	Boston,	" 31,	John P. Putnam.
Spear, Simeon C.	Sharon,	" 12,	Samuel B. Noyes.
Taylor, Mary	Boston,	July 1,	Charles Demond.
White, Rodolphus	Shelburne,	Aug. 11,	David Aiken.
Wilkinson, Wm. N.	Melrose,	" 18,	Asa F. Lawrence.
Williams, Avery	Pittsfield,	As of Aug. 8,	Lorenzo H. Gamwell.
Withington, Alpheus M.	Plymouth, having usual place of business in Roxbury.	Aug. 14,	Francis Hilliard.

[1] Messer & Averell.
[2] M. S. J. & Co.